

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

May 11, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200262
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Interactive Voice Applications, Inc. (IVA) PO Box 670991 Dallas, TX 75367 Email: Charnette@ivacsp.com	TELEPHONE Charnette Young (214)369-2486
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 335-4804 Pamela Platte
Contract Compliance Inspector: Patty Bogard DIT/DHS Random Moment Sampling (RMS) System	
CONTRACT PERIOD: From: 9/15/2008 To: 9/14/2015	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, this contract is hereby INCREASED by \$15,000.00. Please note that the buyer has been changed to Pam Platte. All other terms, conditions and specifications remain the same.

AUTHORITY/REASON(S):

Per DTMB and agency agreement.

INCREASE: \$15,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$215,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

September 19, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200262
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Interactive Voice Applications, Inc. (IVA) PO Box 670991 Dallas, TX 75367		TELEPHONE Charnette Young (214)369-2486
		VENDOR NUMBER/MAIL CODE
Email: Charnette@ivacsp.com		BUYER/CA (517) 241-7233 Joann Klasko
Contract Compliance Inspector: Patty Bogard DIT/DHS Random Moment Sampling (RMS) System		
CONTRACT PERIOD: From: 9/15/2008 To: 9/14/2015		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		
MISCELLANEOUS INFORMATION:		

NATURE OF CHANGE(S):

This change notice is to correct the end date of the contract, which includes 2 option years. The new end date is September 14, 2015.

AUTHORITY/REASON(S):

Per DMB and agency agreement.

Estimated Contract Value Remains: \$200,000.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

September 15, 2008

NOTICE
OF
CONTRACT NO. 071B8200262
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Interactive Voice Applications, Inc. (IVA) PO Box 670991 Dallas, TX 75367 Email: Charnette@ivacsp.com	TELEPHONE Charnette Young (214)369-2486
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-7233 Joann Klasko
Contract Compliance Inspector: Mary Ladd DIT/DHS Random Moment Sampling (RMS) System	
CONTRACT PERIOD: From: 9/15/2008 To: 9/14/2013	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

Estimated Contract Value: \$200,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B8200262
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR Interactive Voice Applications, Inc. (IVA) PO Box 670991 Dallas, TX 75367 <p style="text-align: right;">Email: Charnette@ivacsp.com</p>		TELEPHONE Charnette Young (214)369-2486 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-7233 Joann Klasko
Contract Compliance Inspector: Mary Ladd <p style="text-align: center;">DIT/DHS Random Moment Sampling (RMS) System</p>		
CONTRACT PERIOD: From: 9/15/2008 To: 9/14/2013		
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>	
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>		
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Estimated Contract Value: \$200,000.00		

THIS IS NOT AN ORDER: The terms and conditions of this contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Original contract was awarded on the basis of our inquiry bearing the Req No. 084R8200156.

<p>FOR THE VENDOR:</p> <p style="text-align: center;">Interactive Voice Applications, Inc.</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p>FOR THE STATE:</p> <hr/> <p style="text-align: center;">Signature Joann Klasko, Buyer</p> <hr/> <p style="text-align: center;">Name Purchasing Operations, IT Division</p> <hr/> <p style="text-align: center;">Title</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract 071B8200262

**Random Moment Sampling (RMS) Automated Data Collection System
For the Department of Human Services**

**Buyer Name: Joann Klasko
Telephone Number: (517)241.-7233
E-Mail Address: KlaskoJ@michigan.gov**

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- Appendix C – General System and Technical Requirements for a Vendor-Hosted System**
- Appendix D-1, D-2, D-3 - Key Personnel Resume Template**
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- Appendix F-1, F-2, F-3 - Cost Tables**

Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.01 PROJECT REQUEST

The State of Michigan (State), through the Michigan Department of Management & Budget (MDMB), and Michigan Department of Human Services (MDHS), with assistance of the Michigan Department of Information Technology (MDIT), has issued this contract for a Random Moment Sampling (RMS) Automated Data Collection System. The system will perform random moment sampling studies of first line MDHS staff for the purpose of reporting federal cost allocation claims.

The State seeks to have services begin after the award of the contract in 2008. Full implementation of the system must be completed within six months from start of contract.

The negotiated contract resulting from the RFP will have a minimum term of five (5) years, with two (2) one-year extensions to provide continued maintenance of the product while in use by the State. Renewal of the contract will be at the sole discretion of the State and will be based on acceptable performance of the selected Contractor as determined by the State.

1.002 BACKGROUND

The Michigan Department of Human Services assists children, families and vulnerable adults to be safe, stable and self-supporting.

Random Moment Sampling (RMS) is a method for collecting data on the work activities of MDHS staff in order to allocate costs that MDHS incurs in its administration of federal programs such as Medicaid, Food Assistance and Title IV-E foster care. Claims are made based on the amount of time spent on the various program areas.

The Random Moment Study process is currently carried out via a staff of Data Collectors who travel to all 83 of the counties in the state over the period of a year and collect the information using in-person interviews with randomly selected staff at random 8, 10 or 15 minute intervals throughout the day.

The current system involves paper forms used to collect the information that must be copied and mailed to staff. Staff uses these forms to document the observations they make of staff. These forms are then mailed back to the central administrative office and the data are hand-entered into an ACCESS database. The data are then analyzed using a combination of ACCESS, Excel and SPSS (Statistical Program for Social Services) and forwarded to MDHS Accounting.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

This project consists of the following scope:

- Business Requirements Analysis
- Software
 - COTS Package
 - Application Design, Development and Implementation
To include: export capability to at least one of the following platforms - Excel, Access and Oracle
- Managed Service
- Hosting
- Knowledge Transfer

- Training
- Documentation
- Operation Services for Contractor-hosted solution
- Maintenance and Support
- Future development services to meet new requirements

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 OUT OF SCOPE

The following are out of the scope of this Request for Proposals:

- Identification, procurement or installation of equipment
- Business process reengineering services
- Desktop upgrades, if required

1.103 ENVIRONMENT

The links below will provide information on the State’s Enterprise IT policies, standards and procedures which include security policy and procedures, IT strategic plan and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and guidelines that have been developed over the years. All services and products provided as a result of this contract must comply with all applicable State IT policies and standards in effect at the time the RFP was issued. The Contractor awarded the contract must request any exception to State IT policies and standards in accordance with MDIT processes. It will be the responsibility of the State to deny the exception request or to seek a policy or standards exception.

Contractor is required to review all applicable links provided below.

Enterprise IT Policies, Standards and Procedures:
<http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>

IT Strategic Plan:
<http://www.michigan.gov/dit/0,1607,7-139-30637-135173--,00.html>

The State’s Project Management Methodology (PMM) must be followed:
http://www.michigan.gov/dit/0,1607,7-139-18391_22016-58009--,00.html

The State Unified Information Technology Environment (SUITE):
 Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

All software and hardware items provided by the Contractor must run on and be compatible with the MDIT Standard Information Technology Environment. Additionally, if the State is hosting the solution, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDIT. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The State’s Project Manager and MDIT must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any



change. Any changes must be approved, in writing, by the State's Project Manager and MDIT, before work may proceed based on the changed environment.

IT Security Policy and Procedures:

<http://www.michigan.gov/dit/0,1607,7-139-34305-108216--,00.html>

The State's security environment includes:

- MDIT provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDIT's Office of Enterprise Security.

MDIT's Office of Enterprise Security follows federal security standards, and, in accordance with the United States Office of Management and Budget policy memorandum M-07-11, "Implementation of Commonly Accepted Configurations for Windows Operating Systems":

- The provider of information technology shall certify applications are fully functional and operate correctly as intended on systems using the Federal Desktop Core Configuration (FDCC). This includes Internet Explorer 7 configured to operate on Windows http://csrc.nist.gov/itsec/guidance_WinXP.html Windows XP and Vista (in Protected Mode on Vista). For the Windows XP settings, see: http://csrc.nist.gov/itsec/guidance_vista.html, and for the Windows Vista settings, see: http://csrc.nist.gov/itsec/guidance_vista.html.
- The standard installations, operation, maintenance, update, and/or patching of software shall not alter the configuration settings from the approved FDCC configuration. The information technology should also use the Windows Installer Service for installation to the default "program files" directory and should be able to silently install and uninstall.
- Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

MDIT/MDHS information technology environment consists of:

- Hardware Listing
 - See Appendix B – General System and Technical Requirements – State Hosted System, section 4.
- Operating Systems
 - Windows XP
- Database
 - Oracle
- Locations
 - Statewide
- Capacity Projections
 - 20,000 records per quarter will be generated from responses from a pool of 8,000 employees
 - Each record may contain up to 10 variables
 - Data must be available for 7 years for auditing purposes
- Disaster Recovery Requirements and Priorities
 - Back-ups should be performed daily if a Contractor-hosted system is provided
- Development tools
 - .NET or JAVA with ORACLE Database preferred
- Browser
 - Internet Explorer 6.0
- Reporting tools
 - Available through product software if Contractor-hosted system



- Compatible with Business Objects or Crystal Reports if MDHS hosted system
- Interfaces
 - Novell GroupWise and Outlook compatible
- Classes of users – Administrative Support, Eligibility Specialist, Family Independence Specialists, Services Specialists and Analysts
- Other systems/applications requiring integration
 - export capability to Excel, Access or Oracle

1.104 WORK AND DELIVERABLES

This section includes - **I. Services (work) To Be Provided** and **Deliverables** for the successful completion of this project, and - **II. Requirements** (functional, general system and technical, and service levels)

MDHS seeks to purchase an automated system to replace the manual process with an automated web-based system to perform random moment sampling of first line MDHS staff for the purpose of reporting federal cost allocation claims.

The desired system will randomly select staff names from a database and send an email instructing the selected individual to go to a web link where they will respond to questions regarding their work activities. The responses will then populate an ORACLE data base. The desired web-based application will conveniently guide the worker through the data entry process and provide the requestor with a flexible and modifiable application with which to analyze and report the captured data.

The system will accommodate four distinct groups of staff, with separate data elements, requiring between 1,000 and 6,000 contacts per quarter for each group of staff. The system will need to be accessible from work locations of all staff in the state to be studied, both in local offices and at off-site locations. Maintenance functions will also need to be accessible from several sites within the state in addition to central administration offices.

MDHS is looking for a time and cost savings with this process.

I. Services (work) To Be Provided and Deliverables

The Contractor will install the system and be in operation by January 2009.

A. Business Requirements Analysis

1. Facilitate requirements gathering activities to complete more detailed analysis of the system requirements – The Contractor shall:
 - a. Conduct and document requirements gathering sessions with MDIT/MDHS.
2. Requirements Verification and Validation – The Contractor shall:
 - a. Conduct and document requirements verification and validation sessions with MDIT/MDHS.
 - b. Ensure requirements meet federal, state and industry standards.
 - c. Clarify any unclear or ambiguous requirements which could have an impact on the implementation of the system. The requirements validation activities must include, but are not limited to:
 - i. Review and analysis of current business operations.
 - ii. Data requirements
 - iii. Network WAN, LAN, and telecommunications requirements
 - iv. Hardware and operating system requirements and technical specifications.
 - v. The minimum software, hardware and system requirements necessary for any State information technology resource that will interface with the operation of the Contractor’s system, if a Contractor-hosted solution is provided.
 - vi. RmsPlus! Is an online web and Email based random moment sample system which satisfies all of MDHS’ requirements for this project. There will be standard configuration which takes place prior to going live:



- The Contractor will load into RmsPlus! A base configuration of employees, response codes, response web pages and training material. The Contractor will base the initial configuration on material provided plus other material (employee lists) provided by MDHS, together with examples of online material gleaned from best practices of other agencies using RmsPlus! In a manner similar to the way MDHS is planning to.
- The contractor and MDHS personnel will then sit down together and review the base configuration. The contractor will explain how and why the configuration was constructed and enter into discussions with MDHS regarding ways to improve the configuration. MDHS will be left with the task of further reviewing the material on their own and returning with a list of changes which they would like to see for their implementation of RmsPlus!
- The contractor and MDHS will then work from that document to negotiate the final list of configuration and customization items which will be implemented

The resulting document will then serve as the business requirements document for the project.

Deliverable(s)

Requirements Traceability Matrix (SEM-401)
Requirements Specification (SEM-402)

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria

B. Software – The Contractor shall:

1. Provide the software, application or service.
 - Customized COTS software – RmsPlus!€
 - Vendor hosted system
 - Provide instruction on the use of the managed system.

Deliverable(s)

Delivery of customized RmsPlus!

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria

C. Application Design, Development and Implementation

1. Application design - Contractor will add identified functionality to the RMS application as identified through the following processes:
 - a. Business Requirements process conducted by the Contractor.
 - b. Requests from the MDIT/MDHS Project Managers in response to unexpected situations.
2. Services to implement the application, including
 - a. Configuration
 - b. Customization
 - c. Modification
 - d. Interfaces - Contractor must provide appropriate system interfaces to the following applications:
 - i. Novell GroupWise: State of Michigan’s email system
 - ii. If Contractor-hosted, export capability to at least one of the following platforms - Excel, Access, Oracle.
 - e. Testing - Contractor will:
 - i. Test the application during customization phase to ensure that the requirements are satisfied and to validate the results.
 - ii. All test errors are to be corrected; corrections implemented, and tests re-executed in their entirety.
 - iii. The State is responsible for user acceptance testing. The State will not accept the product



and sign-off on implementation until such time as the State certifies successful completion of acceptance testing by the system.

1. Contractor shall provide support for the duration of UAT.
2. Contractor shall provide both business and technical assistance.
3. The testing process will include the ability to provide for a complete test cycle.
4. Contractor shall support the UAT by:
 - a. Monitoring system performance.
 - b. Investigating why data was not processed.
 - c. Monitoring computer resource usage.
 - d. Participating in problem review meetings.
 - e. Investigating problems and identifying potential problems.
 - f. Answering user questions about the system.
 - g. Investigating and ensuring user access to the system in the UAT environment.
 - h. Generally helping the users execute tests and review results.
- iv. Contractor shall work with the State to test the backup and restore processes following application acceptance testing, to ensure that the system does function accurately and effectively.
- v. Pilot
 - The plan comprehends a one month pilot with selected counties. Upon completion of the pilot, the contractor and DHS personnel will reconvene to review the results of the pilot and make any follow up recommendations for changes to the implementation. The contractor will implement the changes and again publish them to the web site for review by DHS personnel.

Deliverable(s)

- i. Related documentation to include the Data Element Dictionary
- ii. Implementation of customized software
- iii. Testing plans, scripts, and reports:
 - o Test Plan (SEM 602)
 - o Test Reports (SEM603)

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria.

- D. Training** – Contractor shall provide on-site training on the system for 5 to 10 Administrator staff conducted two weeks prior to implementation. Contractor will also provide online training for end users.

Deliverable(s)

The contractor will provide the following:

- a. Training plan – (SEM-703)
- b. Overview of RmsPlus! system operation
- c. Operating the different web pages
- d. Administrator’s responsibilities on a daily and quarterly basis
- e. Printing reports
- f. Exporting data
- g. Online training features of RmsPlus! for end users
- h. Load an initial training module for each worker class prior to the first meeting
- i. Training material will be delivered to the end users 3 weeks prior to implementation

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria.

MDHS and MDIT staff are properly trained and supplied with the proper tools and documentation to use, support, upgrade, monitor, operate, and configure the application in accordance with the requirements of this contract and the accepted Contractor’s proposal.



F. Documentation – Contractor shall provide the documents identified in the Article 1, Section 1.104 - Work and Deliverables.

Deliverable(s)

- a. User and Technical Manuals
- b. Maintenance Plan (SEM-301)
- c. Software Configuration Management Plan (SEM-302)
- d. PMM Charter (PMM-02) / Project Plan (PMM-03)
- e. Requirements Management Checklist (SEM-403)
- f. Conversion Plan (SEM-601)
- g. Software Testing Checklist (SEM-606)
- h. Training Checklist (SEM-704)

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria.

G. Operation Services for Contractor Hosted services – Operation services will be provided as defined in the Requirements identified in Section 1.104, Work and Deliverables and Appendix C – General System & Technical Requirement – Contractor Hosted System.

- Contractor will provide the software for the managed system.

Deliverable(s):

- a. Systems management
- b. Disaster recovery – Contractor has multiple redundant servers in the data center
- c. Security administration services as approved by MDIT Office of Enterprise Security
- d. Storage services
- e. Management of equipment at the Contractor’s site and owned by the Contractor.

Acceptance Criteria

1. The services will be accepted in accordance with the requirements of the contract.
2. MDHS and MDIT will review a Request for Approval of Services within a mutually agreed upon timeframe from completion or implementation.
 - a. Approvals will be written and signed by MDHS and MDIT Project Managers.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit a Request for Approval of Services for approval within 30 days of receipt.
3. The Contractor has the tools and connectivity installed, in compliance with MDIT standards, to properly support and monitor the application.
4. The Contractor's hardware and software system meets the requirements and defined service level measurements.

H. Maintenance and Support – Maintenance and support will be provided as defined in the requirements identified in Section 1.104, Work and Deliverables.

Deliverable(s)

- a. Maintenance of purchased and customized software
- b. Support
 - i. Help Desk – Support available during normal business hours – 7:00 AM – 6:00 pm EST, Monday – Friday. After hours help desk calls are routed to an on-call technician.
- c. Vendor upgrades to RmsPlus! Contractor will notify and obtain approval from the MDIT and MDHS Project Managers before an upgrade is allowed.

Acceptance Criteria

1. The services will be accepted in accordance with the requirements of the contract.



2. MDHS and MDIT will review a Request for Approval of Services within a mutually agreed upon timeframe from completion or implementation.
 - a. Approvals will be written and signed by MDHS and MDIT Project Managers.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit a Request for Approval of Services for approval within 30 days of receipt.
5. The Contractor has the tools and connectivity installed, in compliance with MDIT standards, to properly support and monitor the application.

I. Future system enhancements

1. Contractor will provide future system enhancement activities -
 - a. System enhancements include changes to the system that are necessary to meet:
 - i. New State policy requirements,
 - ii. New Federal regulations,
 - iii. New technology or security needs requested by the State, or
 - iv. Accommodate new or updated interfaces requested by the State.

The State will submit a Statement of Work (SOW) to the Contractor for the enhancements requested and the Contractor will provide a written price proposal. Upon review and approval of the MDIT Project Manager, a Purchase Order release will be issued to the Contractor for the project to begin.

Deliverable(s)

- a. Project plan for any requested system enhancement activities
- b. Related documentation to include the Data Element Dictionary
- c. Customized software application
- d. Implementation of customized software
- e. Testing plans and scripts
- f. Testing results

Acceptance Criteria

See acceptance criteria identified in Section 1.5, Acceptance, and 1.501 – Criteria.

II. Requirements

- A. Functional Requirements** – Functional requirements for the application are listed in the table of **Appendix A**.
- B. General System and Technical Requirements** - General System and Technical requirements for a Contractor-hosted solution are found in **Appendix C**.

C. Service Level Requirements

1. Both online inquiry and online update of single transactions shall be achieved in three (3) seconds or less ninety-five percent (95%) of the time.

Measurement – Time will be measured from the time the request arrives in the application server until the final response leaves the application server.

Target Performance –100% compliance with target service level.

Period of Review – Monthly
2. The system shall be accessible by users no less than 99.8% of the time based on a schedule of 14 (fourteen) hours / 5 (five) days a week between 6:00 am and 8:00 pm, EST. Scheduled maintenance not included.



Measurement – Accessible 14 hours, 5 days, less scheduled outages as agreed by State. Total accessible hours divided by total hours in measurement period, excluding force of nature as defined in Article 2, Terms and Conditions.
Target Performance – 100% compliance with target service level.
Period of Review – Monthly

3. The Contractor shall provide telephone technical support on a work week basis (7:00 am – 6:00 pm, EST, Monday – Friday) for all applications procured as a result of this RFP with 90% of calls answered < 60 seconds by a live person who resides in the USA.

Measurement – Number of calls answered / total calls.
Target Performance – 99% compliance with target service level.
Period of Review – Monthly

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

I. Contractor Staff

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

The Contractor's staff must be able to pass a security clearance check conducted by the Contractor. The Contractor must present certifications evidencing satisfactory background checks and drug tests for all staff identified for assignment to this project. The Contractor is responsible for any costs associated with ensuring their staff meets all requirements.

The Contractor will identify a **Single Point of Contact (SPOC)** within their organization for project logistics and related duties.

The SPOC will be Charnette Young.

The duties of the SPOC shall include, but not be limited to:

1. Supporting the management of the Contract,
2. Facilitating dispute resolution, and
3. Advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the contractor-designated SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The State has identified that the Key Personnel for this project will be as follows:

Project Manager - John Young

All Key Personnel may be subject to the State's interview and approval process.

The Contractor will provide a project manager, as key personnel, to work closely with the designated personnel from the State to insure a smooth transition to the new system. The project manager will coordinate all of the activities of the Contractor's resources assigned to the project and create all reports required by State. The Contractor's project manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this contract
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team



- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this contract.

A. On Site Work Requirements

1. Location of Work

- a. The work is to be performed, completed, and managed at the contractor's location.

2. Hours of Operation: if it is necessary for the vendor to be on-site

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m., EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

1. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
2. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks (ICHAT) and drug tests for all staff identified for assignment to this project.

Contractor will be required is responsible for any costs associated with ensuring their staff meets all requirements.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

When on-site, the State will provide the following resources for the Contractor's use on this project:

- Meeting space
- Access to copiers and fax machine

The State project team may consist of MDIT and MDHS project managers and various State project support staff.

State Project Managers- (MDIT and MDHS)

MDIT will provide a Project Manager. MDIT will be responsible for the State's infrastructure and work together with the Contractor in determining the system configuration.

The MDIT Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off on invoices
- Resolve project issues

- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

MDIT and DHS Project Managers				
Name	Agency/Division	Title	Email	Phone
David Fox	MDIT/Agency Services Division	MDIT Project Manager	FoxD@michigan.gov	517-373-0952
Chris Schattmaier	MDHS/FOA Administration	MDHS Project Manager	SchattmaierC@michigan.gov	517-335-3946

Project Support

In addition, various MDIT and MDHS staff may be required at stages of the project to provide project support. The Contractor’s Project Manager will make every effort to provide the State with advance notice of when those services may be required.

- Systems Analyst
- Application Administrator
- User Implementation Coordinator
- Network Administrator
- Database administrator
- Remote access to test database environment

MDIT Contract Administrator

MDIT shall provide a Contract Administrator whose duties shall include, but not limited to, supporting the management of the Contract.

MDIT Contract Administrator				
Name	Agency/Division	Title	Email	Phone
Patty Bogard	MDIT/Bureau of Strategic Policy /Contract Office	Contract Administrator	BogardP@michigan.gov	517-335-4051

1.203 OTHER ROLES AND RESPONSIBILITIES

MDIT Office of Enterprise Security, MDHS Federal Reporting Unit in Accounting and MDHS statistician will provide additional input as needed on the project.

1.3 PROJECT PLAN

1.301 PROJECT PLAN MANAGEMENT

I. **Preliminary Project Plan** – The Preliminary Project Plan provided with the proposal, including necessary time frames and deliverables for the various stages of the project will be updated for the State – see Project Control, 1.301 section IV for delivery date.

The Preliminary Project Plan will include a MS Project plan or equivalent, approved by MDIT/MDHS:

1. A description of the deliverables to be provided under this contract.
2. Target dates and critical paths for the deliverables.
3. Identification of roles and responsibilities, including the organization responsible. Contractor is to provide a roles and responsibility matrix
4. The labor, equipment, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
5. Internal milestones
6. Task durations



II. Orientation Meeting

- A. Upon ten (10) calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract.
- B. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor.
- C. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

III. Performance Review Meetings

- A. The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract.
- B. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor.
- C. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

IV. Project Control

- A. The Contractor will carry out this project under the direction and control of MDHS.
- B. Within ten (10) working days after completion of the Business Requirements Analysis, the Contractor will submit to the State project manager(s) for final approval of the project plan.
 - 1. This project plan must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown (work plan) showing sub-projects, activities and tasks, and resources required and allocated to each.
 - d. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the work plan.
 - e. Upon approval of the Project Plan by the State, it will be marked as an Appendix and will be accepted by both parties as a part of the Contract and will be incorporated by reference. The State shall use the Project Plan in its determination of the performance of the Contractor.
 - 2. The Contractor will manage the project in accordance with the PMBOK® (Project Management Body of Knowledge from the Project Management Institute) and the state's Project Management Methodology (PMM). Methodology is available at www.michigan.gov/projectmanagement.
 - a. Contractor must use Systems Engineering Methodology endorsed by State of Michigan.
 - b. Information on this methodology can be viewed at State Unified Information Technology Environment (SUITE) at www.michigan.gov/SUITE
 - 3. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
 - a. Staffing tables with names of personnel assigned to Contract tasks.
 - b. Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next thirty (30) calendar days, updated semi-monthly).
 - c. Updates must include a revised estimate to complete.
 - d. Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - 4. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

1.302 REPORTS

Reporting formats will be discussed at the orientation meeting and once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

Contractor must provide the following reports:

- Weekly Project status
- Updated project plan
- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Schedule status
- Action Item status
- Issues
- Change Control
- Maintenance Activity

1.4 Project Management

1.401 ISSUE MANAGEMENT

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State’s Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from the MDIT Project Manager to State Management to be determined after award of the contract.

1.402 RISK MANAGEMENT

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State’s PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.



1.403 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

1.5 Acceptance

1.501 CRITERIA

This is standard acceptance criteria for document and software deliverables. Any specific criteria, processes and/or procedures required for each deliverable/milestone is listed in Section 1.104 Work and Deliverables.

Document Deliverables

1. Documents are dated and in electronic format, compatible with State of Michigan software in accordance with Article 1.302.
2. Requirements documents are reviewed and updated throughout the development process to assure requirements are delivered in the final product.
3. Draft documents are not accepted as final deliverables.
4. The documents will be reviewed and accepted in accordance with the requirements of the Contract and Appendices.
5. MDIT will review documents within a mutually agreed upon timeframe.
 - a. Approvals will be written and signed by MDIT Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt.

Software Deliverables - Software includes, but is not limited to, software product, development tools, support tools, data migration software, integration software, and installation software.

- a. Beta software is not accepted as final deliverable.
- b. The software will be reviewed and accepted in accordance with the requirements of the contract.
- c. MDIT will review software within a mutually agreed upon timeframe for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery, and operation.
 - a. Approvals will be written and signed by MDIT Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit software for approval within 30 days of receipt.
- a. Software is installed and configured, with assistance from MDIT, in an appropriate environment (e.g. development, conversion, QA testing, UAT testing, production, and training).
- b. Contingency plans, de- installation procedures, and software are provided by the Contractor and approved by MDIT Project Manager.
- c. Final acceptance of the software will depend on the successful completion of User Acceptance Testing (UAT).



- d. Testing will demonstrate the system’s compliance with the requirements of the RFP. At a minimum, the testing will confirm the following:
 - i. Functional - the capabilities of the system with respect to the functions and features described in the RFP.
 - ii. Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.
- 1. MDIT will review test software, data, and results within a mutually agreed upon timeframe.
 - a. Approvals will be written and signed by MDIT Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval within 30 days of receipt.
- a. MDIT will review software license agreements within a mutually agreed upon timeframe.
 - a. Approvals will be written and signed by MDIT Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit the license agreement for approval and final signature by the authorized State signatory within 30 days of receipt
- a. Software source code, where applicable, is reviewed by MDIT within a mutually agreed upon timeframe for readability, structure, and configuration management.
 - a. Approvals will be written and signed by MDIT Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit source code for approval.

1.502 FINAL ACCEPTANCE

Final acceptance is expressly conditioned upon completion of all deliverables/milestones, completion of all tasks in the project plan as approved, completion of all applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements.

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

The contract is for a firm fixed price contract. The State shall pay the Contractor an amount up to an amount not to exceed \$200,000.00 for up to five years with two optional one-year extensions at the State’s sole discretion.

All prices quoted and included in the contract (see Article 1, Attachment A – Pricing), will be firm for the duration of the Contract. No price changes will be permitted.

Staffing categories and hourly rates shall be firm for the duration of the 5-year Contract.

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State’s MDIT Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect.

Contractor agrees all the prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If, during the term of this Contract, Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to the State for subsequent purchases.

Payment / Invoice

Contractor will submit properly itemized invoices to MDIT – Procurement and to the “**BILL TO**” address that is listed on the Purchase Order Release. Invoices shall provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;



- Description of any commodities/equipment, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discounts.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

1.7 Additional Information Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

None.

Article 1, Attachment A Pricing

Cost Tables

**Appendix F-3
Cost Tables – Managed Services COTS System (per observation billed)
DIT-DHS – RMS project**

Total System Cost

No.	Cost Categories	Cost (\$) Base Years (1-5)	Cost (\$) Option Years (6-7)	Cost (\$) All Years (1-7)	Comments
Table 1	Total Project (One Time) Cost	\$30,000		\$30,000	
Table 2	Update Costs	Included	Included	Included	
Table 3	Hosting Costs	\$105,000	\$42,000	\$147,000	
Table 8	Managed System (Per Observation Billed System)				
	Total System Cost	\$135,000	\$42,000	\$177,000	

Table 1: Total Project (One Time) Cost

No.	Cost Categories	Cost (\$)	% of the Total Cost	Comments
Table 4	Customization/Configuration of COTS Package Cost of modification of the COTS package to meet business requirements. Give breakdown in Table 4.	\$25,000	83%	
Table 5	Training and Documentation Give breakdown in Table 5.	\$5,000	17%	
	Total Project Cost	\$ 30,000	100%	

Table 2: Updates, Maintenance, and Support Costs

Maintenance, Updates and Support Cost (includes all programming and DB administration functions for implementing future business requirements and all licensing (if any) and updates each year)	Cost (\$)	Comments
1. First Year		
2. Second Year		
3. Third Year		
4. Fourth Year		
5. Fifth Year		
Total Base Years - Updates and Support (YEARS 1 - 5)	\$	
6. Sixth Year (Option)		
7. Seventh Year (Option)		
Total Option Years - Updates and Support (YEARS 6 - 7)	\$	
Total Updates and Support (YEARS 1-7)	\$	

**Appendix F-3
 Cost Tables – Managed Services COTS System (per observation billed)
 DIT-DHS – RMS project**

Table 3: Hosting Services

Hosting

Annual Hosting Fee (if any)	Cost (\$)	Comments
1. First Year	\$21,000	
2. Second Year	\$21,000	
3. Third Year	\$21,000	
4. Fourth Year	\$21,000	
5. Fifth Year	\$21,000	
Total Base Years – Hosting (YEARS 1 - 5)	\$105,000	
6. Sixth Year (Option)	\$21,000	
7. Seventh Year (Option)	\$21,000	
Total Option Years – Hosting (YEARS 6-7)	\$42,000	
Total Hosting (YEARS 1-7)	\$147,000	

Cost Breakdown Tables

Table 4: Breakdown of Customization/Configuration of CMS Package

Customization/Configuration of COTS Package	% of the Total Cost	Total cost (\$)	Comments
Total Cost of Customization/Configuration	100%	\$ 25,000	

Table 5: Breakdown of Training and Documentation Cost

Training cost and Documentation	Total Cost (\$)	Comments
1. User Training Costs	Included	Administrator training and online web based training for users Included.
2. Documentation Costs	\$5,000	
Total Cost of Training & Documentation	\$ 5,000	

Table 6 Managed System Cost

Managed System Cost	Total Cost (\$)	Comments
1. Cost Per Observations		
2. Other Costs (Please List)		
Total Cost of Managed System	\$	

Table 7 Labor Rates for future enhancements

**Appendix F-3
 Cost Tables – Managed Services COTS System (per observation billed)
 DIT-DHS – RMS project**

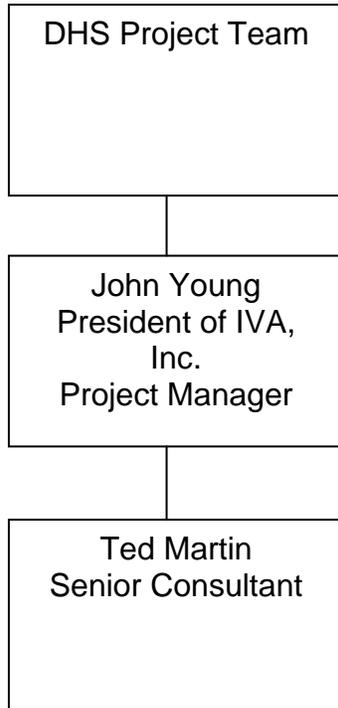
Resource Classification	Labor rate (per hour)	Comments
1. Project management	\$150	
2. Business analysts		
3. System analysts		
4. Programmer/developers	\$125	
5. System administrators		
6. Database administrators	\$125	
7. Q/A Manager		
8. Security specialist		
9. Testers		
10. Technical writers		
11. CM specialists		
12. System Architects		
13. Network engineer/administrator		
14. Software Architects	\$125	
15. CM specialists		
16. Project assistants		
17. Web developers	\$125	
18. Application trainers		
Others: (List) below:		
19.		
20.		
21.		
22.		

Note: Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. The State will utilize the fully loaded hourly rates detailed above for each staff that will be used as fixed rates for responses to separate statements of work for future enhancements.

The State will submit a Statement of Work to the Contractor for the enhancements requested and the Contractor will provide a written price proposal. Upon review and approval of the MDIT Project Manager, a Purchase Order release will be issued to the Contractor for the project to begin.

Article 1, Attachment B

Organizational Chart, including Key Personnel





Article 1, Attachment C

Labor Rates

N/A

Article 1, Attachment D

Deliverables

N/A

Article 1, Attachment E
Project Plan



Projects

May 26, 2008

Showing items for all users in all active projects

Description	Resp	Due Date	Done
Michigan DHS RmsPlus!	JY	Jan 1, 2009	<input type="checkbox"/>
Project Kickoff Meeting	JY	Sep 15, 2008	<input type="checkbox"/>
Preliminary Load of DHS Data Into RmsPlus	JY	Sep 12, 2008	<input type="checkbox"/>
DHS Reviews Preliminary Configuration, Makes Changes	JY	Sep 26, 2008	<input type="checkbox"/>
IVA Prepares Requirements Document	JY	Oct 3, 2008	<input type="checkbox"/>
IVA Makes Changes to RmsPlus Configuration	JY	Oct 10, 2008	<input type="checkbox"/>
Review Configuration, Plan for Pilot	JY	Oct 13, 2008	<input type="checkbox"/>
Initial Configuration Confirmed, Ready for Pilot	JY	Oct 13, 2008	<input type="checkbox"/>
DHS Provides IVA Employee Data For Pilot	JY	Oct 20, 2008	<input type="checkbox"/>
IVA Loads Employee Data and Configures Pilot	JY	Oct 31, 2008	<input type="checkbox"/>
Pilot Test	JY	Nov 28, 2008	<input type="checkbox"/>
Review Pilot	JY	Dec 1, 2008	<input type="checkbox"/>
Pilot Completed and Reviewed	JY	Dec 1, 2008	<input type="checkbox"/>
IVA Makes Configuration Changes Based On Pilot	JY	Dec 12, 2008	<input type="checkbox"/>
IVA Prepares For Preliminary Rollout	JY	Dec 12, 2008	<input type="checkbox"/>
Preliminary Announcements With Training Link Go Out	JY	Dec 31, 2008	<input type="checkbox"/>
IVA Presents Administrator Training	JY	Dec 15, 2008	<input type="checkbox"/>
Administrator Training Day 2	JY	Dec 16, 2008	<input type="checkbox"/>
Review of Rollout Results	JY	Dec 22, 2008	<input type="checkbox"/>
IVA Makes Any Last Minute Adjustments	JY	Dec 26, 2008	<input type="checkbox"/>
DHS Loads Employees and Generates Samples for First Quarter	JY	Dec 31, 2008	<input type="checkbox"/>
RmsPlus Live!	JY	Jan 1, 2009	<input type="checkbox"/>



Article 1, Attachment F
Service Level Agreement

N/A



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.



- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
 - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor’s and the State’s respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and **DIT/DHS** (collectively, including all other relevant State of Michigan departments and agencies, the “State”). PURCHASING OPERATIONS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **PURCHASING OPERATIONS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the office of Purchasing Operations for this Contract is:

Joann Klasko
 Purchasing Operations
 Department of Management and Budget
 Mason Bldg, 2nd Floor
 530 West Allegan St.
 Lansing, MI 48933
 Email: KlaskoJ@michigan.gov
 Phone: (517)241-7233

2.015 Contract Compliance Inspector

Upon receipt at PURCHASING OPERATIONS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Patty Bogard
 Department of Information Technology
 Constitution Hall, 1st Floor North
 525 West Allegan St.
 Lansing, MI 48933
 Email: BogardP@michigan.gov
 Phone: (517)335-4051

2.016 Project Manager

The following individuals will oversee the project:

DHS Project Manager: Chris Schattmaier
 Department of Human Services
 Address: 235 S. Grand Avenue
 City: Lansing, MI 48909
 Email: SchattmaierC@michigan.gov
 Phone: (517) 335-3946

DIT Project Manager: Dave Fox
 Department of Information Technology
 235 S. Grand Ave.
 Lansing, MI 48909
 FoxD@michigan.gov
 (517)373-0952

2.020 Contract Objectives/Scope/Background

2.021 Background

Please see section 1.001.

2.022 Purpose

The purpose of this request and subsequent contract is to obtain a Random Moment Sampling Automated Data Collection System, for the purpose of reporting federal cost allocation claims. This will be a time and cost savings solution to the state.

2.023 Objectives and Scope

Please see section 1.101, In Scope and section 1.104 Work and Deliverables.

2.024 Interpretation

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

2.025 Form, Function and Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.030 Legal Effect and Term

2.031 Legal Effect

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.032 Contract Term

This Contract is for a period of five (5) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the



Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel

2.041 Contractor Personnel

(a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.



(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed \$50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor



will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.042 Contractor Identification

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.043 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

2.044 Subcontracting by Contractor

(a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary



information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

(e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.050 State Standards

2.051 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>.

2.052 PM Methodology Standards

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

2.053 Adherence to Portal Technology Tools

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.



2.054 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables

2.061 Ordering.

(b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.

2.062 Software

Exhibit C lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit C** includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit C** also identifies certain items of software to be provided by the State.

2.063 Hardware

Exhibit B lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit B** includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). **Exhibit B** also identifies certain items of hardware to be provided by the State.

2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

(b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.



2.070 Performance

2.071 Performance, In General

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

2.073 Liquidated Damages

RESERVED

2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

RESERVED

2.076 Service Level Agreements (SLAs)

RESERVED



2.080 Delivery and Acceptance of Deliverables

2.081 Delivery of Deliverables

Article 1, Attachment D contains a list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document (“Written Deliverable”) or a Custom Software Deliverable. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State’s review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

In discharging its obligations under this Section, Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute’s Capability Maturity Model for Software (“CMM Level 3”) or its equivalent.

2.082 Contractor System Testing

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor’s development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor’s System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor’s system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor’s System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State’s projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor’s System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State’s computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, Contractor shall provide the State for State review and written approval Contractor’s test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to **Section 2.080**, Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.



2.083 Approval of Deliverables, In General

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with **Section 2.080**.

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable that remain outstanding at the time of State approval.

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.



2.084 Process for Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

2.085 Process for Approval of Custom Software Deliverables

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in **Article 1, Attachment D**, the State Review Period for conducting UAT will be as indicated in **Article 1, Attachment D**. For any other Custom Software Deliverables not listed in **Article 1, Attachment D**, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by **Section 2.080** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section 2.080**.



2.086 Final Acceptance

“Final Acceptance” shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor’s charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

(d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State’s accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, or each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor’s invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State’s standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.



(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.

(d) Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

(e) Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

(f) Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback

RESERVED

2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website (www.cpexpress.state.mi.us).



2.100 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

2.103 Reports and Meetings

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

2.104 System Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State’s approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

2.105 Reserved

2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor’s responsibilities under the Contract (“New Work”), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a “Change”), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a “Change Request”).

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor’s proposal will include any associated changes in the technical



specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, office of Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools

Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

2.110 Records and Inspections

2.111a Records and Inspections

(a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

(b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit,



examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

(c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

(d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

2.111b Records and Inspections

RESERVED

2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.



(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.152 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.



2.153 Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

2.155 No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract immediately of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

2.159 Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

2.160 Proprietary Rights

2.161a Ownership Ownership of Work Product by State. All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

Vesting of Rights. With the sole exception of any preexisting licensed works identified in **Exhibit C**, the Contractor shall assign, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon State's request, the Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.161b Cross-

License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

License to the Contractor. The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.



License Back to the State. Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

2.161c License

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

2.162 Source Code Escrow

(a) Definition. "Source Code Escrow Package" shall mean:

- (i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- (iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

(b) Delivery of Source Code into Escrow. Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within thirty (30) days of the execution of this Contract.

(c) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

(d) Verification. The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.

(e) Escrow Fees. All fees and expenses charged by the Escrow Agent will be paid by the Contractor.



- (f) Release Events. The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:
- (i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
 - (ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
 - (iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.
- (g) Release Event Procedures. If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in **Section 2.162(f)**, then:
- (i) The State shall comply with all procedures in the Escrow Contract;
 - (ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
 - (iii) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.
- (h) License. Upon release from the Escrow Agent pursuant to an event described in **Section 2.162(f)**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.
- (i) Derivative Works. Any Derivative Works to the source code released from escrow which are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

2.163 Rights in Data

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property. Any piece of equipment that is used by the vendor, must be cleansed of data when the contract is completed or the equipment is retired.



2.164 Ownership of Materials

State and Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.165 Standard Software

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in **Exhibit C**.

2.166 Pre-existing Materials for Custom Software Deliverables

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

2.167 General Skills

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations

2.171 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.



(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all



descriptions, specifications and drawings made a part of the Contract) for a period of one hundred eighty (180) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

As used in this Contract, “Self-Help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, “Unauthorized Code” means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor’s authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.173 Equipment Warranty

RESERVED

2.174 Physical Media Warranty

RESERVED

2.175a DISCLAIMER

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.175b Standard Warranties

(a) Warranty of Merchantability

Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.

(b) Warranty of fitness for a particular purpose

When Contractor has reason to know or knows any particular purpose for which the Deliverables are required, and when the State is relying on the Contractor's skill or judgment to select or furnish suitable Deliverables, the Contractor warrants that the Deliverables are fit for such purpose.

(c) Warranty of title

Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Contractor shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

- 1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit
 - \$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.



The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for



required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State’s written consent, at the State’s election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State’s election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor’s breach of the No Surreptitious Code Warranty.

(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker’s disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State’s or Contractor’s opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor’s sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State’s satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor’s charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys’ fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or



approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

2.193 Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (for low risk contracts – Select a higher amount for moderate to high risk contracts) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the



Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for



Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

2.213 Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.214 Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.



2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.217 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.



(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.



2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.



(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.



2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.270 Litigation

2.271 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:

(1) Within thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify Purchasing Operations.

(2) Contractor shall also notify the Purchasing Operations within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.



2.272 Governing Law

The Contract shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.273 Compliance with Laws

Contractor shall comply with all applicable state, federal, and local laws and ordinances (“Applicable Laws”) in providing the Services/Deliverables.

2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor’s Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State’s convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is



applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.



2.294 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.295 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.296 Notices

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan
DMB-Purchasing Operations
Attention: Joann Klasko
530 West Allegan
Mason Bldg., 2nd Floor
Lansing, Michigan 48933

With a copy to:

State of Michigan
Department of Information Technology
Attention: Patty Bogard
525 West Allegan
Constitution Hall, 1st Floor North
Lansing, Michigan 48933

Contractor:

Charnette Young
PO Box 670991
Dallas, TX 75367

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

(b) Binding Commitments

Representatives of Contractor identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.



2.297 Media Releases and Contract Distribution

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.298 Reformation and Severability

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.299 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.303 Permits

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.



2.304 Website Incorporation

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.305 Taxes

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

2.306 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.307 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.

2.308 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an



incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.322 State Employee Purchases

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the State employee on a direct and individual basis.

To the extent that authorized State employees purchase quantities of Services and/or Deliverables under this Contract, the quantities of Services and/or Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

<http://www.epls.gov/epl/servlet/EPLSearchMain/1>

Requirements Matrix

Appendix A – Functional Requirements

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Resp.	Comments
1. The system will allow the initial loading of worker data, i.e., the names and identifying information for the workers to be studied.	M	✓		A	IVA usually performs the initial employee data load for a preliminary configuration of <i>RmsPlus!</i> After that, at the discretion of DHS, the employees can either be loaded from a file through the browser or simply maintained online in <i>RmsPlus!</i>
2. The system will generate a randomly selected list of staff for observation. The number of staff selected in a given period will be determined by MDHS statisticians.	M	✓		A	<i>RmsPlus!</i> accepts the number of samples to generate as an input to the sample generation screen.
3. The system will generate error reports indicating non-responses and incomplete or inconsistent responses.	M	✓		A	A key feature of <i>RmsPlus!</i> is that invalid response combinations are not allowed to be entered in the first place – the user is not given a choice to enter something invalid. There are on-screen displays and reports showing non-responses. See sections H and I of the Appendix for examples of employee response screens where invalid responses are not allowed.
4. The system will include a feature to notify the State of undeliverable Emails.	M	✓		A	A variety of return Emails, including undeliverable notices, plus other things such as read receipts, and employee ‘Replies’ to emails are handled automatically by <i>RmsPlus!</i> Where possible they handled automatically by <i>RmsPlus!</i> and no further action is required on the part of the administrator (read receipts). Some types of return Email can’t be handled automatically and are routed to the DHS administrators in-box for review and action. IVA personnel also monitor the flow of those return Emails looking for trends and potential problems. See section G.12 and G.13 of the Appendix for more information on Email handling.
5. The system will include features to identify and send follow-up email notices to non-responders.	M	✓		A	<i>RmsPlus!</i> has a sophisticated mechanism called ‘Contact Policies’ which designate when notification Emails go out and who they go to. Most <i>RmsPlus!</i> users configure the initial Email plus at least one follow up to go out a day later and also usually a follow up to the employee’s supervisor. See section G.7 on page yy of the appendix for more information.
6. The system will include the capability of	M	✓		A	There is a reports menu for each worker group in <i>RmsPlus!</i> ,

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Resp.	Comments
generating reports via a Reports Menu with the ability to modify the data elements used to calculate the reports (for example, to accommodate changes in federal funding coding).					showing the reports available for that group. Most of the reports have display parameters which control what records are selected. See section K of the Appendix for more information on reports. IVA generally expects to customize several reports for each new installation. Each <i>RmsPlus!</i> user has their own unique reporting requirements, so we consider that part of the process, and it's included in the price.
7. The system will be capable of calculations involving combination variables (i.e., divide response among multiple programs and weight appropriately).	M	✓		A	<i>RmsPlus!</i> includes an allocation matrix into which DHS would typically enter case counts or penetration rates. These numbers are then used by our 'Tabulated Results' report to split the response counts across to different funding sources. See section K.1 of the Appendix for more information.
8. The system will produce a report of observation counts and percentages based on Federal reporting requirements.	M	✓		A	These are standard reports in <i>RmsPlus!</i> . The 'Response Counts' report tallies up and reports on the responses, showing percentages. The 'Tabulated Results' report spreads the response counts to funding sources via the allocation matrix, using case counts or penetration rates. See section K of the Appendix for more information.
9. The system will compute confidence intervals.	O		✓	B	This is not currently in <i>RmsPlus!</i> , but it's a good idea. The report would show various combinations of confidence and error for the number of responses recorded so far in the quarter. Administrators would be able to see how well the sample process is proceeding, and would be able to tell if they are meeting the requirements of the time study in terms of confidence and margin of error. This would be in place before DHS goes live with <i>RmsPlus!</i> .
10. The system will be amenable to modifications of the number and content of data requested.	M	✓		A	These are configurable fields in <i>RmsPlus!</i> . May times these changes require nothing more than entering them into <i>RmsPlus!</i> – for example adding coding options or changing the wording or descriptive narratives. In those cases the changes go into effect immediately. Sometimes changes such as these would also require a change to the online response web pages, such as inserting a whole new page in the sequence to accommodate the new data field. In those cases IVA would work with DHS to configure and test the new pages.
11. The system will allow for decision tree type responses in which the next question to be answered is dependent on the	M	✓		A	A 'Decision Tree' type response mechanism is built in to <i>RmsPlus!</i> from the ground up. Multiple data types are available, and in <i>RmsPlus!</i> the valid combinations of those

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Resp.	Comments
answer to the first question.					data types can be set. Then the response pages follow that logic, designating that when one item is selected, the options valid in combination with the first item are presented for the next item.
12. The system will allow edits to be inserted and modified regarding the allowed response combinations.	M	✓		A	The valid response combinations are configurable in <i>RmsPlus!</i> by the administrators.
13. The system will include the ability of the State to modify the response screens.	M	✓		A	The screens are changed automatically when the response coding options, narratives and combinations change. On occasion, DHS may want changes which adjust the flow of the response screens – for example, to separate training out separately from other response sequences and gather information about training differently. In those cases, DHS would work with IVA to adjust their specific response screens.
14. The system will include maintenance screens to allow for changes to survey questions and responses.	M	✓		A	The response coding is configurable on the <i>RmsPlus!</i> administrative screens.
15. The system will include navigational aides, such as “back” buttons and mouse over capability or links to coding definitions.	M	✓		A	The employee response pages in <i>RmsPlus!</i> have both a back button plus will automatically show the coding definitions if the employee picks one from the drop down list. In addition, most <i>RmsPlus!</i> users have a ‘Help’ button on the employee response page which brings up training information to help the employee navigate through the screens and also to refine his coding selections.
16. Text fields for responder comments will be included.	M	✓		A	Each sample response can have a comments field. The location on the response screen, plus instructions to the employees regarding what to put in that field and when are configured by DHS and included on their customized response pages.
17. The system will identify the date and time of the actual response by worker and will create a unique identifies for each response.	M	✓		A	The sample log includes the date and time the sample was recorded, and by who. Possibilities include the employee himself/herself, the employee’s supervisor, an <i>RmsPlus!</i> administrator, or any other people which DHS configures <i>RmsPlus!</i> Emails to go out to, such as a local Rms coordinator.
18. If data are housed on another server, the system will allow data to be downloaded to the State’s system (i.e., the contractor will not “own” the data or limit access to	M	✓		A	<i>RmsPlus!</i> has a built in Access database download feature to allow each user to download a complete database of the current quarter, including employees, samples and responses. The state is encouraged to download and include

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Resp.	Comments
it.)					this database in their normal backup cycle.
19. The system will allow access to the database and the ability to produce ad hoc reports.	O	✓		A	Using the Access database download feature of <i>RmsPlus!</i> , DHS personnel can perform a variety of operations on the data, such as producing their own reports using the Access report writer, and exporting the data to their own Oracle database.
20. The system will operate effectively on Internet Explorer 6.0 and higher.	M	✓		A	<i>RmsPlus!</i> works with IE 6.0 or higher.
21. The system (both data entry and maintenance) will be simultaneously accessible to multiple users in multiple locations.	M	✓		A	All features of <i>RmsPlus!</i> are available to multiple users in multiple locations over the internet at the same time. This includes both administrators and employees.
22. The system will be secure from outside access.	M	✓		A	Access to the <i>RmsPlus!</i> database is severely restricted. No other <i>RmsPlus!</i> user will see DHS data. All access to <i>RmsPlus!</i> is via encrypted (SSL) communication. See section O of the appendix for more information.
23. The system will have role-based security for maintenance and administrative changes.	M	✓		A	<i>RmsPlus!</i> has several roles built in to it. The first is that employees cannot log on to the administrative web site – they can only see the response pages for their samples. Within <i>RmsPlus!</i> there are various roles and permissions which can be set, including: <ul style="list-style-type: none"> • Read only access • Current quarter only • Menu item specific access – turn on and off menu items on a per user basis.
24. Hardware needs and costs (if applicable) are to be specified by the contractor.	M	✓		A	No specific needs – just a PC, browser and internet connection.

Appendix C – General System & Technical Requirements, Vendor-Hosted System

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
25. Vendor will specify annual hosting costs.	M	✓		A	Annual hosting costs are listed in the cost tables.
26. Vendor will specify five (5) year maintenance costs.	M	✓		A	Maintenance costs are included in the annual hosting costs. We'll split the costs out if DHS needs both numbers.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
27. System will include administrative screens to allow the state to make changes to data entry screens.	M	✓		A	The questions and response codings can be changed by the administrators at any time on the administrative web site.
28. Vendor will export data tables to MDHS at the end of each quarter.	M	✓		A	Administrators have an Access database feature on the web site. They can call for the current database to be downloaded at any time.
29. Security					
a. All computer information systems and applications in a secure manner and comply with State and federal security standards and regulations including the MDIT 1350 Enterprise Security Policy and the 1410.7 Michigan State Government Network Security Policy as found on the website.	M	✓		A	We have reviewed the applicable standards of MDIT 1350 and 1410.7 and certify that <i>RmsPlus!</i> is in compliance with those standards.
b. The system ensures that the integrity and confidentiality of data is protected by safeguards to prevent release of information without proper consent.	M	✓		A	There are several controls in place to ensure the integrity and confidentiality of the data, including: <ul style="list-style-type: none"> • Internal database constraints against invalid data • Access tightly controlled to only a few people • <i>RmsPlus!</i> users see only their own data – no one else's
30. Security / Access Control					
a. The system provides secure access control for administrator accounts based upon unique user login, for types of record as well as by function performed.	M	✓		A	In <i>RmsPlus!</i> the user login controls the authority the user has within the application – read only, current time period, etc.
31. Security / Password Controls					
a. The system provides an enforced minimum length for passwords.	M	✓		A	Minimum length configurable for each agency using <i>RmsPlus!</i>

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
b. The system provides an enforced requirement for user passwords to be automatically prompted for change after a defined period has passed, such as 30, 60 or 90 days.	M	✓		A	Password change cycle configurable for each agency using <i>RmsPlus!</i> .
c. The system provides users with the capability to change their own passwords.	M	✓		A	Password change available on each administrator page of <i>RmsPlus!</i> .
d. The system enters passwords in a non-display field.	M	✓		A	Standard windows 'Password' field used for entry of passwords.
e. The system encrypts passwords when they are routed over the network.	M	✓		A	All communications with <i>RmsPlus!</i> is encrypted via SSL.
f. The system encrypts passwords in system storage.	M	✓		A	Passwords are hashed when stored in the database.
32. Security/Activity Logging					
a. The system maintains an audit trail of all security maintenance performed by date, time, user ID, device and location, with easy access to information.	M	✓		A	Audit trail log of user login maintained in <i>RmsPlus!</i> with reports available showing the activity.
b. Provides security reports to users and access levels.	M	✓		A	Separate reports of users and access levels available online.
c. Provides detailed reports of backups completed and backups failed.	M		✓	B	Report of backups completed or failed not currently available online, but will be provided as part of normal report generation.
33. Software Package Specifications					
a. The software uses an industry standard relational database	M	✓		A	<i>RmsPlus!</i> uses Sql Server 2005.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
management system.					
b. The software allows the State, from PC workstations, to access and update all necessary information to complete a transaction.	M	✓		A	All that's needed for access to <i>RmsPlus!</i> is a PC, browser and internet connection, and the administrators can access and update all the capabilities of <i>RmsPlus!</i> from there.
c. The software allows for the accurate and timely input and extraction of State data.	M	✓		A	All data input and extraction is done online and available real time 24 X 7.
d. The software allows for the processing of all identified State business	M	✓		A	<i>RmsPlus!</i> handles all needs currently identified for DHS. Configuration, minor customization and customized reports are part of the implementation process.
e. The software provides identified data reporting capabilities.	M	✓		A	<i>RmsPlus!</i> has a number of industry standard reports, including those listed in the IFB. IVA plans on customizing reports for each worker type as determined by the needs of DHS during the implementation phase of the project.
f. The software provides a GUI that is user-friendly and provides data, calculation, reporting and communication capabilities to State users.	M	✓		A	The GUI the employees see is a very simple, intuitive wizard which guides the employees step by step through their response. The GUI the administrators see is extremely robust, which numerous on screen features for customizing the display of data.
g. Response times, at local and remote sites, for the major online processes stated above will meet business requirements.	M	✓		A	Average 2 second response time for all <i>RmsPlus!</i> transactions. Employee responses average 1 second, administrator responses average 3 seconds.
h. The Software provides the capability of transferring data to and from the host server to the client for processing on other software packages.	M	✓		A	<i>RmsPlus!</i> has a built in Access database download feature, available on-demand. IVA recommends the state use it to: <ul style="list-style-type: none"> • Include in their normal backup cycle • Generate ad hoc reports • Export to other systems such as Oracle or SPSS
34. Reporting					
a. The software delivers standard reports.	M	✓		A	Industry standard reports part of <i>RmsPlus!</i> See section K on of the Appendix for examples. In addition, IVA anticipates customizing reports

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
					specific to the needs of DHS and each worker type.
b. The system includes ad-hoc query and reporting tools.	M	✓		A	The online reports include a number of on screen features for customizing what data is shown. In addition, the normal on screen displays have several features for customizing: <ul style="list-style-type: none"> • Which records are displayed • Which columns of each record are displayed • Sort order See section K for more information on reports and section J.2 and J.4 for more information on the on screen displays.
c. The online query capability enables non-technical end-users to extract information.	M	✓		A	The on screen displays have an excellent set of features to control the display of data on the screen. See the preceding answer for examples.
d. The standard (e.g. regularly scheduled, recurring) reporting environment allows:		✓		A	All reports in <i>RmsPlus!</i> are on demand. Many reports have a date range which can be specified to restrict the report data to a specific time period such as week or month.
i. Standard reports to be executed, viewed online, printed (centrally or remotely).	M	✓		A	All reports are generated on line, on demand and printed (using PDF) through the browser.
ii. The State to control the information that appears on standard reports so that data security is maintained.	M	✓		A	The state may customize any reports desired to better restrict access to the data. IVA will work with DHS to make those determinations during the configuration of <i>RmsPlus!</i>
e. The system provides:					
i. Methods for retaining and modifying previously built queries.	M	✓		A	All user settings, including current query parameters are saved when the user logs off.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
ii. Security and control mechanisms that limit abuse of ad hoc queries (e.g. attempted access to restricted data, attempted execution of a query that would run for several hours, etc.).	M	✓		A	Access to limited data is controlled by the user's login role. Queries have a time limit.
iii. The use of transaction databases, external files, or a "data warehouse" for ad-hoc reporting.	M	✓		A	Transactions are maintained inside of the <i>RmsPlus!</i> database and are available for reporting.
35. Audit Trail					
a. The system enables the user to modify data entry transactions that have already been posted to the database while maintaining an audit trail of the change.	M	✓		A	In <i>RmsPlus!</i> administrative can override an employee's response coding. The system logs: <ul style="list-style-type: none"> • What the change was • Who made the change • When it was made
b. The system's internal control functionality ensures that the data entry and processing associated with a business event has been completed before updating the database.	M	✓		A	All business logic is completed and verified before a transaction is issued to the database.
36. Edit and Validation Control					
a. The system includes comprehensive field edits	M	✓		A	This is an important feature of <i>RmsPlus!</i> built in from the ground up. The employees cannot select invalid combinations of data – the only choices

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
to prevent incomplete or incorrect data from entering the system.					available to them are ones allowed based on prior steps in the online response sequence.
b. The system ensures data integrity and controls processing without hard-coded logic.	M	✓		A	The integrity is implied by the sequence of asking the questions, and is reinforced with database constraints. No hard coded logic is necessary to make this work.
37. Interfaces					
a. The system has the ability to exchange data with other systems using the following mechanisms: online application to application, web services interface, FTP and SFTP, to and from magnetic media and using warehouse utilities to the State's data warehouse.	M	✓		A	Exchange of data is usually handled by downloading the Access database and then moving the data from there to wherever it needs to go. If other forms of interface are desired, IVA will discuss and plan for them during the implementation phase of this project.
b. The system must provide real-time data transfer of identified data.	M	✓		A	The Access database is downloaded on line, on demand, 24 X 7 and contains up to the minute real time data.
c. The system must send all operational data and reference tables to the data warehouse. Data should be loaded on a predefined timetable.	M	✓		A	The Access data contains all <i>RmsPlus!</i> data for the current quarter, including employees, samples, codings, employee data categories, etc. Data is loaded on demand.
38. Capacity					
a. The system should be able to support 1.5x the peak number of concurrent users in the current system in order to provide sufficient capacity for growth. Current requirement lists 8,000 total users; the standard	M	✓		A	<i>RmsPlus!</i> currently has adequate capacity to support all planned users and employees. Its IVA's responsibility to monitor demand and usage and add capacity as needed.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
would be 100 concurrent users.					
39. System Auditing					
a. The system has the ability to maintain a historical record of all changes made to any item within the system (e.g. data element, business rule, process control, software program), the ID of the person or process that made the change, the before images of the affected data records, and the date and time the change was made.	M	✓		A	Audit trail logs on employee and sample data base items, including what was changed, who changed it and when it was changed. Audit trail of other items will be added as part of the implementation process and be available when <i>RmsPlus!</i> goes live.
b. The system offers the ability to query, view, filter, and sort the system audit trail. The system is able to story the queries.	M		✓	B	Audit trail can be viewed online. Currently there is no sort, view or filter audit trail available, but those will be added during the configuration of <i>RmsPlus!</i> and be available when <i>RmsPlus!</i> goes live.
c. The system has the ability to audit all override of edits and audits and identify the login ID, date, and time.	M	✓		A	The only place this applies in <i>RmsPlus!</i> is when an administrator overrides an employee's response. That transaction is logged with what, who when information and visible on the screen.
40. Error Handling					
a. The system must allow for a user to define an alert message to be executed upon the occurrence of an error.	M	✓		A	Alert messages are user configurable on occurrence of certain selected employee responses.
41. Training					
a. Training is provided as part of the cost of the system, to include:					Online, web based employee training is a normal part of <i>RmsPlus!</i> . The system can be configured so that employees received their training automatically over the internet, including requiring the employees to complete the online training before allowing them to respond to samples.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
i. System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security.	M	✓		A	Administrator training will be provided to the DHS administrators during IVA's final onsite visit to DHS. This usually occurs two weeks before going live with <i>RmsPlus!</i>
b. Upgrades and new versions to the system that affect end-user functionality include training at no additional cost (e.g. classroom or online training, training flier, release features, etc.)	M	✓		A	Training for changes the employees is normally delivered by the online training component of <i>RmsPlus!</i> Training for the administrators for changes in the administrative web site is handled on a case by case basis, ranging from a full blown WebEx explaining major changes to just an Email for very simple, insignificant changes. System changes are logged in an online log of system releases.
c. All training manuals, training plans and other documentation provided become the property of the State.	M	✓		A	Training manuals will be provided not later than the administrator training, and will become the property of the State.
42. Documentation					
a. A minimum of two (2) copies of the following documentation in an electronic format, online and in hard copy, will be provided:					
i. User and Technical Manuals – On-line and Hard Copy	M	✓		A	Employee training material is usually just available online, as a button on the employee response page. Hard copy will be provided if desired by DHS. Administrator manuals are handed out during the training and then posted online for reference. At least two copies will be provided.
ii. Data Element Dictionary	M	✓		A	Data element dictionary will be included in the administrator manual.
iii. Operations Manual	M	✓		A	Operations covered in the administrator's manual.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
b. Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.	M	✓		A	IVA will submit the administrator's manual for State approval.
c. Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.	M	✓		A	IVA will notify the State of any discrepancies uncovered in the manual, and will correct and redistribute the manual.
43. Warranties					
a. A written warranty will be provided.	M	✓		A	IVA will provide a written warranty with the signing of the contract.
b. All configurations are covered by the manufacturer's standard warranty.	M	✓		A	Full operation of all features of <i>RmsPlus!</i> will be covered by the warranty.
c. Warranty commences on the date products are accepted by the State.	M	✓		A	Warranty will begin when <i>RmsPlus!</i> goes live.
d. All applicable third party warranties for deliverables are assigned to the State.	M	✓		A	IVA will assign any and all third party warranties to the state.
e. Any upgrades of the software made during the warranty period are supplied at no extra cost.	M	✓		A	IVA's hosting fee covers all upgrades and maintenance.
44. Maintenance and Support					
a. Maintenance programs commence at the end of the warranty period.	M	✓		A	IVA doesn't distinguish between warranty and maintenance programs. IVA provides full support, enhancements, upgrades, etc. for the life of the contract.
b. All maintenance is performed by qualified personnel familiar with the equipment.	M	✓		A	All IVA technicians working on <i>RmsPlus!</i> will qualified to do so.
c. Remote diagnostic capabilities are provided.	M	✓		A	Diagnostic capabilities for <i>RmsPlus!</i> are available remotely from just about anywhere there's an internet connection.
d. Maintenance is available on an annually renewable contract.	M	✓		A	Maintenance is included in the hosting fee, and runs for the life of the contract.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
e. Contractor agrees that any contract resulting from this procurement may be migrated to a centralized contract for software and associated services, without diminishing, altering, or extinguishing any rights the State has under the terms and conditions of this contract.	M	✓		A	IVA agrees to potential migration of the contract to a centralized contract.
f. The software maintenance program includes all future software updates and system enhancements applicable to system modules licensed without further charge to all licensed users maintaining an annually renewable software support contract.	M	✓		A	All future updates and enhancements are provided for the life of the contract with no additional fee.
g. Help desk support is available 8 am to 6 pm, Monday through Friday, EST, with escalation as necessary, to senior technical/engineering staff, and then to higher management and/or senior management.	M	✓		A	Help desk support is available from 8:00 AM to 7:00 PM Eastern time on normal business days. More experienced technicians and senior managers are available for escalation if a problem cannot be immediately resolved.
h. Maintenance service options are provided including 8 am to 6 pm, Monday through Friday, EST, 2-(emergency), 4-, and 8-hour and next day response times.	M	✓		A	After hours support by an on call technician is included in the hosting fee.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
i. Calls for service will be returned within 2 hours.	M	✓		A	Most calls for service are answered immediately When a message is left the call will be returned within 2 hours.
j. Emergency assistance is available 24 hours a day, seven days a week, at no additional cost to the State.	M	✓		A	After hours calls are routed to an on call technician.
k. The State will be provided with information on software problems encountered at other locations, along with the solution to those problems, when such information is relevant to State software.	M	✓		A	Such items are routinely discussed among different relevant <i>RmsPlus!</i> users, and successfully tips, techniques and processes are passed to each customer, frequently resulting in new features being added to several agencies' implementations of <i>RmsPlus!</i> .
l. Support is provided for superseded releases and back releases still in use by the State.	M	✓		A	Heretofore there has not been a need for this, but if DHS decides to not move to a new release or feature, then it will be made optional so that DHS can stay with the release they're on.
m. For the first year and all subsequent Contract years, the following services are provided for the current version and one previous version of any Software provided with the deliverables, commencing upon installation of the deliverables or delivery of the Software:					
i. Error Correction. Upon notice by State of a problem with the Software (which problem can be verified),	M	✓		A	IVA will continue support any version still used by DHS.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
reasonable efforts to correct or provide a working solution for the problem.					
ii. Material Defects. The State will be notified of any material errors or defects in the deliverables known, or made known to the Contractor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results and shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.	M	✓		A	IVA will notify the State of any such errors or defects it discovers.
iii. Updates. All new releases and bug fixes (collectively referred to as "Changes") for any software deliverable developed or	M	✓		A	All updates to <i>RmsPlus!</i> no matter who they are for, will be made available to DHS during the term of the contract.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
published by Contractor and made generally available to its other customers at no additional charge will be provided to the State at no additional charge.					
45. Migration					
a. Data, and related information, has a migration path to future revisions of the hardware and software and there is a guaranteed and reasonably straightforward “exit path” to systems of other vendors.	M	✓		A	<p>Being a hosted system, all current data will be supported by future versions of <i>RmsPlus!</i></p> <p>The downloadable Access database will provide a reasonable ‘Exit’ strategy to any other vendor’s system.</p>
b. Data will migrate smoothly to any future revision of the software and hardware (“smoothly” would be defined as having the system administrator follow Contractor-supplied written instructions to run a Contractor-supplied program or programs in batch mode to convert data, or any process that is simpler or more automatic than this).	M	✓		A	<p>By definition as a hosted system, no migration will be necessary – <i>RmsPlus!</i> will continue to support its own data from all previous versions.</p>
c. Data will export to XML format.	M		✓	B	<p>No export to XML is currently available, but if this is desired by DHS IVA will plan for it and have it available by the time <i>RmsPlus!</i> goes live.</p>

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
46. Delivery Requirements					
a. For all orders placed by the State during the term of this Contract, delivery will be made within ten (10) business days of order. (Elapsed delivery time will be measured from the time an order is accepted, either verbally or in writing by the Contractor, to the time product is delivered to the site identified in the purchase order.)	M	✓		A	It is not expected that any material will be delivered under the terms of this contract. However if something is to be delivered, IVA will delivered with 10 business days.
b. If, during the term of the Agreement, the Contractor enters into a contract with any other customer for substantially the same quantity, equipment, software, and services, terms, and conditions for a lower cost, the Contractor will offer the same decrease in rate to the State.	M	✓		A	IVA will agree to lower the prices DHS pays if another customer with substantially similar requirements receives a lower price.
47. Backup and Recovery					
a. The system has the ability to provide point-in-time recovery of data to the last completed transaction.	M	✓		A	Full transaction logging is used in Sql Server 2005 for <i>RmsPlus!</i> .
b. The system has the ability to allow for continued use of the system during backup.	M	✓		A	Backup does not take <i>RmsPlus!</i> offline.
c. The system has the ability to provide a complete backup and recovery process for all database tables and system files.	M	✓		A	Weekly full backups and daily incremental backups are rotated off site weekly.

Functional Requirements	Mand Opt.	Yes	Yes Mods	Req. Res p.	Comments
d. The system has the ability to create on request backups.	M	✓		A	Access database download can be initiated by DHS administrators on demand, 24 X 7.
e. The backup and archival features of the system proposed can be initiated automatically or by manual request.	M	✓		A	System backup occurs automatically. Access database download is initiated on demand.
f. The system software and data must be able to be restored to its previous operational status within four (4) hours after initiation of recovery process.	M	✓		A	Complete restore takes only a few minutes. Several days of backups are available online, with no need to call for tapes to be delivered.