

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET    November 4, 2010  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B8200287**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE Janice Espinosa <b>(800)695-7788 x 1169</b>
<b>US Netcom Corp</b> <b>710 South Maiden Lane</b> <b>Joplin, MO 64801</b> <b>Email: Janice.espinosa@usnetcomcorp.com</b>		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-1455 <b>Laura Gyorkos</b>
Contract Compliance Inspector: Sara Williams		
<b>WIC AUTO DIALER</b>		
CONTRACT PERIOD:                      From: <b>9/8/2008</b>		To: <b>9/7/2015</b>
TERMS	<b>N/A</b>	SHIPMENT
		<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM
		<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

**Effective immediately, this contract is hereby CANCELED due to change in vendor name and FEIN number. It is hereby REPLACED with 071B1300106. Please also note that the buyer has been changed to Laura Gyorkos.**

**AUTHORITY/REASON(S):**

**Per agreement between the Vendor and the State of Michigan, and Ad Board approval dated February 16, 2010.**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$0.00**

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

February 17, 2010

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B8200287**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE Janice Espinosa <b>(800)695-7788 x 1169</b>
<b>US Netcom Corp</b> <b>710 South Maiden Lane</b> <b>Joplin, MO 64801</b> <b>Email: Janice.espinosa@usnetcomcorp.com</b>		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-7233 <b>Joann Klasko</b>
Contract Compliance Inspector: Sara Williams		
<b>WIC AUTO DIALER</b>		
CONTRACT PERIOD: From: <b>9/8/2008</b>		To: <b>9/7/2015</b>
TERMS	<b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

Effective immediately, this contract is **EXTENDED** two years. The new contract end date is **September 7, 2015**.

In addition, per Executive Directive 2009-3, the vendor has proposed a reduction of 10% per call rate, from \$0.06 to \$0.54, in exchange for the State exercising the two option years. Based on the vendor's estimate, the State's annual spend on this contract is \$36,000.00. Exercising the two option years will result in no reduction or increase in the contract value. Estimated savings for the contract term October 1, 2010 through September 30, 2015, would equal \$14,440.00.

All other terms, conditions, specifications and pricing remain the same.

**AUTHORITY/REASON(S):**

Per agreement between the Vendor and the State of Michigan, and Ad Board approval dated February 16, 2010.

**ESTIMATED CONTRACT VALUE REMAINS: \$241,040.00**

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 23, 2008

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B8200287**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE Janice Espinosa <b>(800)695-7788 x 1169</b>
<b>US Netcom Corp</b> <b>710 South Maiden Lane</b> <b>Joplin, MO 64801</b> <b>Email: Janice.espinosa@usnetcomcorp.com</b>		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-7233 <b>Joann Klasko</b>
Contract Compliance Inspector: Sara Williams		
<b>WIC AUTO DIALER</b>		
CONTRACT PERIOD: From: <b>9/8/2008</b>		To: <b>9/7/2013</b>
TERMS	<b>N/A</b>	SHIPMENT
		<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM
		<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

**This Change Notice is to replace the following sections with the attachment to Change Notice No. 1:**

**Section 1.104 Work Deliverables, Web-Based System Deliverables, Retrying Calls**

**AND**

**Section 1.301 Project Plan Management Project Control (Paragraph #3).**

**All other terms, conditions, specifications and pricing remain the same.**

**AUTHORITY/REASON(S):**

**Per DCH, DIT, DMB, and vendor concurrence.**

**ESTIMATED CONTRACT VALUE REMAINS: \$241,040.00**

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 10, 2008

NOTICE  
OF  
CONTRACT NO. 071B8200287  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE Janice Espinosa <b>(800)695-7788 x 1169</b>
<b>US Netcom Corp</b> <b>710 South Maiden Lane</b> <b>Joplin, MO 64801</b> <b>Email: Janice.espinosa@usnetcomcorp.com</b>		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-7233 <b>Joann Klasko</b>
Contract Compliance Inspector: Sara Williams		
<b>WIC AUTO DIALER</b>		
CONTRACT PERIOD: From: <b>9/8/2008</b>		To: <b>9/7/2013</b>
TERMS	<b>N/A</b>	SHIPMENT
		<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM
		<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		
<b>N/A</b>		
MISCELLANEOUS INFORMATION:		

**Estimated Contract Value: \$241,040.00**

**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. 071B8200287**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>US Netcom Corp</b> <b>710 South Maiden Lane</b> <b>Joplin, MO 64801</b> <b>Email: Janice.espinosa@usnetcomcorp.com</b>	TELEPHONE Janice Espinosa <b>(800)695-7788 x 1169</b> VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-7233 <b>Joann Klasko</b>
Contract Compliance Inspector: Sara Williams <p style="text-align: center;"><b>WIC AUTO DIALER</b></p>	
CONTRACT PERIOD: From: <b>9/8/2008</b> To: <b>9/7/2013</b>	
TERMS <span style="float: right;"><b>N/A</b></span>	SHIPMENT <span style="float: right;"><b>N/A</b></span>
F.O.B. <span style="float: right;"><b>N/A</b></span>	SHIPPED FROM <span style="float: right;"><b>N/A</b></span>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>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.</b> <b>Estimated Contract Value: \$241,040.00</b>	

**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 State of Maryland's bid 07-9366.

**FOR THE VENDOR:**  
**Three Sigma Software Inc.**  
 \_\_\_\_\_  
 Firm Name  
 \_\_\_\_\_  
 Authorized Agent Signature  
 \_\_\_\_\_  
 Authorized Agent (Print or Type)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date

**FOR THE STATE:**  
 \_\_\_\_\_  
 Signature  
**Greg Faremouth, Acting Director**  
 \_\_\_\_\_  
 Name  
**IT Division**  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date



**STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations**

**Contract 071B8200287**

**MDIT/MDCH WIC Autodialer Contract**

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

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**APPENDICES**

Attachment A – Pricing  
 Michigan Calling Script  
 Michigan Local Agencies

Michigan WIC Appointments

**Article 1 – Statement of Work (SOW)**

**1.000 Project Identification**

**1.01 Project Request**

The State of Michigan (State), through the Michigan Department of Community Health (MDCH), in coordination with the Michigan Department of Information Technology (MDIT), and with assistance of the Michigan Department of Management & Budget (MDMB), have issued this contract for the purpose of obtaining a custom off-the-shelf (COTS) software package that is a web-based Appointment Reminder System for the Michigan Women, Infants and Children Program (WIC).

The contract term will have a minimum term of five (5) years, with two (2) one-year extensions to provide appointment reminder system services for the MI-WIC program for the State of Michigan. 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**

Under the guidance of the USDA Food and Nutrition Service, the Michigan WIC Program provides supplemental foods, health care referrals, and nutrition education for low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and to infants and children up to the age of five who are found to be at nutritional risk.

The program consists of 49 local agencies and over 210 clinics serving in excess of 235,000 WIC clients each month. The Michigan WIC program has approximately 1,900 authorized retailers who redeem over \$175 million a year in WIC food.

The State is in the process of transferring and implementing the Maryland WIC system WOW (WIC on Web) for the Michigan program. The system will support Michigan WIC program areas including: income eligibility, adjunct eligibility, certification and enrollment, nutrition education, appointment scheduling, food package prescription, Electronic Benefits Transfer (EBT) food benefits, vendor/retailer authorization and monitoring, and program administration.

The transferred system will be modified to support the Michigan WIC program as specified in contract 071B7200133 between State of Michigan and Three Sigma Software. The “to be” implemented system is christened MI-WIC. MI-WIC stands for Management Information for Michigan WIC Program.

Studies have indicated participant rates are higher if a client is reminded of his or her appointment for a WIC service. Appointment reminders increase the participation. The Michigan WIC program needs to maintain 97% participation rate to continuously secure the allotted federal funds.

Auto dialer will be used to deliver reminder and recall messages to the clients about scheduled WIC appointments through the telephone. The set up will be integrated with the core WIC eligibility application MI-WIC and involve delivering messages prior to a scheduled appointment date. A typical message will include a greeting and a message such as “Hello, this is the <<County WIC program>> calling to remind that you have a WIC appointment on <<date>> at <<time>>. If you need to reschedule, or if you need to talk with a WIC staff, please call <<phone number>>”.

The Michigan WIC program requires a solution that is a centralized enterprise based hosted application. The contractor’s architecture for the autodialer system must easily integrate with MI-WIC.

**1.100 Scope of Work and Deliverables**

**1.101 In Scope**

The contractor shall provide the service of a web-based appointment reminder system that will support a call volume of up to 1,000,000 outgoing calls per year. The State will provide the contractor with a data file that includes the information necessary to process the reminder calls.

The contractor shall assume the responsibility for maintaining all software, telephone lines, hardware, peripheral devices, and any other equipment in their possession while the service is in operation. The contractor shall provide a resolution for solution failure incidents within 24 hours from the State reported time. All software and hardware updates should be internally managed and coordinated with the State as new technology allows. The updates must be seamless to the State and must not affect any functionality of the solution.

The contractor shall provide evidence that the web based appointment reminder system hardware is configured, operated, staffed, supported and maintained by their own operations/call center personnel.

Auto dialer capabilities used to deliver reminder and recall messages to the WIC clients about scheduled WIC appointments through the telephone will be integrated with the WIC eligibility application MI-WIC and involve delivering messages prior to a scheduled appointment date. A typical message will include a greeting and a message such as “Hello, this is the <<Local Agency WIC program>> calling to remind that you have a WIC appointment on <<date>> at <<time>>. “ If you need to reschedule or if you need to talk with a WIC staff, please call <<phone number>>”. The message shall further be customized depending on the type of appointment. An additional sentence such as “Please bring your ID, Medicaid card, and proof of income” can be added for initial certification appointment.

After the reminder message has been spoken a menu of options should play. The menu shall be: 1) Press 1 to confirm that you understand this message 2) Press 2 to repeat the message, or 3) Press 3 if you cannot make the appointment.

The auto dialer application shall also be used to notify missed appointments or general notifications for clinic closings due to emergencies, etc.

It is expected that the system will place a call per family for all the participants’ appointments to be scheduled during a single visit to a local agency/clinic. The Michigan WIC program currently serves approximately 160,000 families. A participant on an average can have up to four appointments per year.

**1.102 Out Of Scope**

The following are considered out of scope:

- System development of a brand new system from ground up to accomplish the business requirements outlined in this contract.
- Installation of any hardware or software at the WIC clinics to support the required features to support auto dialer with MI-WIC

**1.103 Environment**

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

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards in effect at the time the RFP is 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>

All software and hardware items provided by the Contractor must run on and be compatible with the MDIT Standard Information Technology Environment. Additionally, 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.

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

*MDIT requires that it's single – sign on security environment be used for all new client-server software development. 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.*

*Any additional Agency specific security requirements above and beyond the enterprise requirements and standard terms and conditions stated in Article 2 must be provided as part of the Agency Specific Technical Environment.*

**IT Strategic Plan:**

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

**IT eMichigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/Look\\_and\\_Feel\\_Standards\\_2006\\_v3\\_166408\\_7.pdf](http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf)

**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>

**1.104 Work and Deliverable**

The contractor shall provide the service of a web-based appointment reminder system that will support a call volume of up 1,000,000 outgoing calls per year. The State will provide the contractor with a data file that includes the information necessary to process the reminder calls.

The following are the expected features of the auto dialer:

1. **High Dial-Out Capacity** - The system shall dial out on multiple telephone lines continuously per the programmed start and stop times.



2. **Multiple Languages/Messages** – The contractor shall be capable to deliver messages in the following languages: English, Spanish, French, Arabic, Russian, Vietnamese and Korean. In addition, the system should allow recording many different messages in each language. For example, one message might remind a participant of an upcoming recertification date and another different message might recall a participant for a missed appointment. The auto dialer must use "spliced" messages to play appointment times and dates, appointment types, local agency name and contact information, etc.

The auto dialer shall be capable of delivering standard general messages to a group of participants. Some examples include clinic closure and formula recall.

3. **Integrated Process** - The auto dialer system must be integrated with the WIC eligibility application. Data transfer between the applications must be seamless without any user intervention. As the data is sensitive information, the data must be encrypted as per MDIT policies.
4. **Call Confirmation Options** – The system shall prompt for the listener to enter a touch-tone digit to hear the recorded options after a reminder message has played. The responses from the listener must be integrated with Appointment Scheduler. The touch-tone options should include replay message, confirm understanding/appointment, select a language choice, cancel appointment, and end call.
5. **Dial Out Report** – The system shall provide statewide, local agency, and clinic dial out reports.
6. **Do Not Call List** – If participants elect not to be called for any reason, the auto dialer must not call these participants.
7. **Prescheduled Dial Out Times** - The system shall use specific times during the day for dial outs as well as specific days during the week.
8. **Holiday Exclusion** - The system shall exclude calling participants on holidays such as Christmas, New Year, Thanksgiving, etc.
9. **Weekend Exclusion** - The system shall exclude calling participants on Sundays and Saturdays. This feature must be customizable by local agency's preference as some agencies are open on Saturdays.
10. **Message Recording** – The system shall allow remote users and state staff to record messages from any touch-tone phone by the entering the pass code protected recording area to record, change, or delete messages. The system shall allow the user to listen to a message after it is recorded. Messages recorded should be easily accessed via touch-tone phone. The system shall allow the user to pause, jump ahead, and jump back in a message, go to the previous message or next message, delete the current message, and play the time and date of the message.
11. **Inadvertent Message Delivery Safeguards** – The system must ensure that dial outs do not happen before 8 AM and after 9 PM EST/EDT.
12. **Pass code Protection** – The system shall provide pass code protection to allow multiple users to have secure access to the system.
13. **Call Progress Detection** - Busy signals, no answers, answering machines, hang-ups, disconnects, modems, FAX machines, operator intercept message, etc must be detected and handled appropriately.

#### Web-based System Deliverables are:

##### Appointment Reminder Messages

The appointment reminder calls must speak messages/prompts recorded from a human voice or computer equivalent that is recorded in a professional studio recording with English diction. The message(s) must include the following:

- a. Greeting
- b. Accept Call
- c. Participant Names(s)
- d. Location of Appointment (local Agency Name)
- e. Appointment Date and Time
- f. Confirm/Reschedule

- g. Appointment Instructions (based on Appointment Type)
- h. Closing with Clinic-Specific Telephone Number (based on Clinic ID/Name)
- i. Goodbye Message

The above information is also to be included in messages left on answering machines/voicemail due to no answer. The State will provide a script file that will reflect how the appointment reminder call is to be worded. The contractor shall record the English prompt and message recordings for all local agencies in the Michigan WIC program.

Customization for Family/Multiple Appointments

WIC clients are often scheduled for “Family Appointments” which include the mother (or Head of Household, Authorized Person, father grandparents (or guardian) and the children starting at the same time. Multiple appointments to the same home will be combined into one message that speaks the names of all family members with an appointment. For Family Appointments, appointment instruction prompts will be different. All other prompts in the Appointment Reminder Message will remain the same.

Complete Automation

The reminder calls must be completely automated. Appointment data will be exported from the State’s computer/server, placed on a secure FTP server and imported into the contractor’s database through a secured network connection. Calls will be made beginning at 5:00 pm and ending no later than 9:00 pm each day, supported by a clinic call time data file, which will be provided to the contract. During the call the participants will be asked to confirm their appointment or request a reschedule. Once the participant has made a selection (or a message is left on an answering machine), the call is considered “complete”. An online report will be simultaneously generated as the calls are being completed. Secure, individual user accounts will be created by the contractor for appropriate State and Local Agency staff. Users will have the option to view the report online as the calls are being completed. Upon completion of all calls, daily reports will be emailed to the State and Local Agency staff.

Daily reports will include the status and response of all reminder calls for appointments scheduled the next day or the next two days. No user intervention shall be required to view these daily reports.

Multi-language Capability/Limited English Proficiency (LEP)

In keeping with the LEP Policy compliance efforts, the contractor shall provide outgoing appointment reminder messages in the following languages: English, Spanish, Arabic, French, Russian, Vietnamese and Korean.

The data file provided to the contractor will include a field for Language Codes to identify these participants. All messages will have the same customization as the English messages (including local agency name, participant name, date and time of appointment, special instructions, clinic-specific phone number and goodbye message).

Response Options

Touch-tone response options are required at different intervals. The State will provide a script file that will reflect how the appointment reminder call is to be worded and response option prompts.

Retrying Calls

Calls shall be retried up to three (3) times for any combination of Busy Signal or No Answer. Calls shall allow up to eight (8) rings before being considered No Answer. The final status of each call must be captured as Complete, Answering Machine, Busy, No Answer or Operation Intercept. Calls shall be considered “Complete” after the participant makes a touch tone selection to confirm or cancel the appointment. Payment will be made only for completed calls.



### Detailed Call Reports

Reports must be generated for each WIC clinic and include the following information:

- a. Clinic Name and/or ID Number
- b. Head of Household/Participant Name
- c. Primary Phone Number
- d. Appointment Date
- e. Appointment Time
- f. Response (indicating touch-tone response selected)
- g. Status (call status, ex. Complete, Answering Machine, Busy, No Answer, or Operator Intercept)

Calls generating “No Response”, shall be retried up to three (3) times (with a fifteen (15) minute delay between tries) before a status of “No Response” is determined. In addition, the reason for “No Response” will be explained by a status code or similar means. For example a status code of “No Answer” or “operator Intercept” would be acceptable reasons for a call generating “No Response”

After daily calls are completed a detailed call report shall be automatically emailed to each clinic coordinator and a clinic staff member (or members) of the State’s choosing. (Clinic information and email addresses will be provided at the contract start date.) Call progress shall also be observable in an online report. The online report shall be generated in real time as the calls are being completed and must be accessible by all designated users. The content of the online report and emailed report shall be identical.

### Variable Call-Out Time

The call-out time shall be pre-determined and generally scheduled at the same time each day. However, the call-out time must also be adjustable and must be able to be changed at any time by administrators at the State and Local Agency levels. State administrators will be IT staff or MDCH Business Area Staff, Local Agency administrators will be the Agency Coordinator and up to two (2) staff members of their choosing.

### Account Accessibility

The web-based system shall be available 24 hours a day and seven (7) days a week and accessible by administrators. Administrators are individuals appointed by upper level management to monitor, collect, and review report data from the appointment reminder system. Local agency administrators appointed by the local agency coordinator will have access to the local agency account to change items such as the daily appointment reminder call-out time, which appointment types to call for, clinic-specific information changes (such as phone number changes), blocking calls and updating special reminder messages. State level administrators will have access to all local agency accounts to make limited global changes to include adding or removing users, agencies, and manually uploading appointment files in the case of an emergency. The contractor shall be responsible for providing an additional field in the local agency account in which messages from state level administrators can be placed for all clinics. The contractor shall be responsible for handling all other issues as determined by the department.

### Web-based Interface

A web-based end user interface is required for submitting multiple appointments, calling file uploads and/or entering individual appointments. The end user shall have the ability to upload more than one appointment calling file, along with having the capability of entering individual appointments. Access to the interface shall be established via individual user accounts or direct system access through a secure FTP or web service.

### Support Services

A call center technical support representative shall be available for support for any and all issues relating to the system. Administrators and/or users at the local agency level will contact administrators at the state level if there is a problem. All errors shall be resolved and corrected within 24 hours of when the problem is communicated to the contractor.

Web-based Security

The contractor shall be responsible for IT security and information assurance for all systems operated by or connected to a State network, regardless of location. This includes any IT resources or services in which the contractor has physical or electronic access to the State’s sensitive information. Information technology security/information assurance deals with several different “trust” aspects of information.

Information security is not confined to computer systems, nor to information in an electronic or machine-readable form. It applies to all aspects of safeguarding or protecting the State’s information or data, in any form. The contractor shall ensure the confidentiality of data by using secure systems and processes. Contractor must abide by all State security policies, current and future.

Training

The contractor shall develop and execute a plan to train designated State staff on submitting changes for the recorded messages, starting up dial out groups, printing out and reviewing dial out reports, routine monitoring of system operation, how to handle different error conditions that require corrective action by the contractor, and what is contained in the system documentation. The contractor shall provide training to enable State and Agency staff to fully operate and maintain the operation of the web-based Appointment Reminder System. This training shall include train-the-trainer training to 15 staff members at the State office in Lansing, Michigan. Training must be scheduled with the State, to be completed within two weeks of the installations done by the State. The specific date by which the training must be completed will be provided by the State by written notice.

**1.200 Roles and Responsibilities**

**1.201 Contractor Staff, Roles and Responsibilities**

**The Contractor’s Responsibilities are:**

- The Contractor will send automated appointment reminder calls for MICHIGAN WIC PROGRAM in accordance with the daily data file received from MICHIGAN WIC PROGRAM
- Messages will be clinic specific, appointment specific and delivered in the preferred language of the home as indicated by the appropriate field indicators. The Contractor will not be responsible for recording non-English messages and prompts.
- Messages shall speak the guardian/s name, date and time of appointment
- Touch-tone confirm/cancel/response options shall be included
- After call job completion, detailed call reports shall automatically e-mail back to the appropriate clinic administrator, pending we have the contact data
- The contractor shall work with MICHIGAN WIC PROGRAM personnel during the initial set-up and testing phase. Upon set-up completion, the contractor shall send staff tests calls as requested by MICHIGAN WIC PROGRAM and as listed in the data file. Testing shall be fully complete and approved by the date agreed upon by both parties.
- The contractor shall maintain and operate all telephony equipment and phone lines without any requirements from the State of Michigan
- The contractor shall accommodate the MICHIGAN WIC PROGRAM call volume within the call times as agreed upon by all parties
- The contractor shall customize appointment reminder messages for the Michigan WIC program using script templates from MD DHMH
- The contractors shall provide a full automated appointment reminder service after daily text file reports are generated and saved in the pre-specified location.
- The contractor shall use WinZip Encryption pending MICHIGAN WIC PROGRAM provides the key.
- The contractor shall retry busy and not answered calls three times per call session
- The contractor shall provide 24/7 customer support
- The contractor shall insure that all protected patient data is kept strictly confidential as required by HIPPA.
- The contractor shall provide 24/7 PPMS web access to authorized MICHIGAN WIC PROGRAM staff



- The contractor shall record the English messages for all clinics listed in the initial set-up. All clinic addition recordings after initial set-up shall be charged **at the \$135 p/hour**.
- All work will be performed off-site at the contractor's business and will be fully hosted by the contractor.

The Contractor will identify a Single Point of Contact (SPOC). The duties of the **SPOC** shall include, but not be limited to:

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

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

The Contractor will partner with the State's system development Contractor, **Three Sigma**, for the WIC eligibility system to implement the deliverables. The Contractor may need to attend project status meetings as needed.

The Contractor will be responsible for the purchase, development, testing, implementation, and maintenance of the hardware and software for the auto dialer solution including servers, phone lines, software installs, and data from MI-WIC.

### **1.202 State Staff, Roles, and Responsibilities**

#### **State Staff Responsibilities:**

- Michigan WIC Program shall provide the schedule appointment data file via Three Sigma Software. This file may be saved to an FTP site where PPMS will automatically extract and send appointment reminder calls. The file format will be mutually agreed upon by the State and Vendor and will follow the templates of the transfer system, also served by Three Sigma Software.
- Exchange of PHI data sources will be via DEG SFTP. If the State of Michigan's standard changes during the course of this contract, this requirement may need to be modified
- Michigan WIC Program via Three Sigma Software shall provide the contractor with the clinic data which includes clinic codes and administrative contact for reports. The file format will be mutually agreed upon by the State and Vendor and will follow the templates of the transfer system, also served by Three Sigma Software.
- MICHIGAN WIC PROGRAM shall be responsible for recording all non-English messages and prompts.
- shall be responsible for reviewing all call reports

The State will provide Project Managers from MDCH and MDIT and Project Sponsors from MDCH and MDIT. These senior managers will lead the project.

#### **The DIT Project Manager is:**

From the Michigan Department of Information Technology:

Linda Myers

Department of Information Technology

300 East Michigan Avenue

Lansing, Michigan 48913

Email : [myers@michigan.gov](mailto:myers@michigan.gov)

Phone: (517) 373-3926

Fax: (517) 241-7486

**DCH Project Manager is:**

Alethia Carr  
 Bureau of Family and Maternal Health  
 Michigan Department of Community Health  
 Capitol View Building - 6th Floor  
 201 Townsend Street  
 Lansing, MI 48913  
 Phone 517 335 8922  
 Fax 517 335 9032.

The State Project Managers will be responsible for ensuring that the project is in compliance with the contract and satisfies the requirements stated in the contract. The State Project Managers will consult with the Project Sponsors on a continuing basis in every phase of the project. This joint effort will ensure that the system is properly implemented, supports the requesting agency’s defined functional and technical requirements, and is properly documented. A special goal in this partnership will be to ensure that the system is flexible and expandable to accommodate new requirements that may be legislated.

The Project Managers from the State will provide expertise, assistance, and technical leadership in all matters such as policy, organization and staff, environment, data, information processing, current systems, acceptance testing, and so forth. The State’s Project Managers will work closely with the Contractor’s Project Manager in day-to-day project activity.

The State Project Managers will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external Contractors
- Resolution of project issues
- Utilize change control procedures
- Conducting regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Documentation and archiving of all important project decisions
- Arrange, schedule and facilitate State staff attendance at project meetings

MDIT shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the management of the Contract, ii) advising the State’s project managers of Contractor’s performance under the terms and conditions of the Contract, and iii) periodic verification of pricing and monthly reports submitted by Contractor. The DIT Contract Administrator is:

**Sara Williams**

Michigan Department of Information Technology  
 300 East Michigan Avenue, 2<sup>nd</sup> Floor  
 Lansing, Michigan 48913  
 (517)335-7712  
 williamss11@michigan.gov

**1.203 Other Roles And Responsibilities**

If the Contractor identifies a need for additional State staff, the Contractor should indicate these needs to the State Project Managers. At the State's discretion, State personnel may be substituted or added as needed.



## **1.300 Project Plan**

### **1.301 Project Plan Management**

#### **Project Control**

1. The Contractor will carry out this project under the direction and control of MDCH and MDIT.
2. Within ten (10) working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan.
  - a. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
    - i. The Contractor's project organizational structure.
    - ii. 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.
    - iii. The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
    - iv. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. 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:
    - 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 30 calendar days, updated semi-monthly).
    - iii. Updates must include actual time spent on each task and a revised estimate to complete.
    - iv. Graphs showing critical events, dependencies and decision points during the course of the Contract.
  - b. 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 must be submitted to the State for approval within ten (10) business days of the execution of this contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract. The following reports must be provided, together with any reports identified in Section 1.104, Work and Deliverables, and the following requirements met:

- A. Written monthly summaries or progress reports that outline work accomplished during the reporting period, work to be accomplished during the subsequent reporting period, if known; problems, real or anticipated, which should be brought to the attention of the MDCH and MDIT Project Managers and notification of any significant deviation from the previously agreed upon work plans. All areas of deviation must be reviewed in detail with the MDCH and MDIT Project Managers prior to any final decision. The State Project Managers must approve of the deviation. Each monthly progress report will contain the following:
  1. Project schedule status.
    - a. Identify if the project is on schedule or if there is any deviation from the previously agreed upon schedule.
    - b. If the project has deviated from the previously agreed upon schedule, identify the reason for the deviation and the affected areas.
    - c. Identify in detail the steps that will be taken to resolve the deviation.



- d. Specify any schedule adjustments that have resulted from the deviation.
- 2. Activities of the past month - Summarize the actions taken and progress made on the project during the past month.
- 3. Issues - Identify problems, difficulties, either anticipated or encountered, and suggested solutions.
- 4. Resolution of prior issues - Identify resolutions to issues identified in previous progress reports.
- B. All documentation prepared by the Contractor must be submitted to MDCH and/or MDIT as both a printed hard copy and in Microsoft Word electronic format. MDCH/MDIT and the Contractor must mutually agree upon alternative electronic formats.
- C. The Contractor's name, logo, or other company identifier may not appear on documentation delivered to the State without written authorization from the Contract Administrator. An exception to this will be transmittal of cover letters showing delivery of said documents and invoices.
- D. All documentation submitted to MDCH or MDIT by the Contractor must contain a title page with the following information:
  - 1. Contract Number
  - 2. Contract Expiration Date
  - 3. Name of Contractor
  - 4. Contractor Project Director
  - 5. Date of Deliverable or Report
  - 6. Time Period of Deliverable or Report
- E. All reports and deliverables to be furnished by the Contractor, as described in Section 1.104, Work and Deliverables, will be delivered to the MDCH and MDIT Project Managers for their approval. The Contractor will inspect all reports and deliverables for accuracy and adequacy prior to delivery.

**1.400 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 level 1 through level 3, as defined below:

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Director of WIC Division

**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.

#### **1.500 Acceptance**

##### **1.501 Criteria**

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

##### **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 and MDCH Project Manager.
  - b. 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.

1. Beta software is not accepted as final deliverable.
2. The software will be reviewed and accepted in accordance with the requirements of the contract.
3. 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 and MDCH 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.
4. Software is installed and configured, with assistance from MDIT, in an appropriate environment (e.g. development, conversion, QA testing, UAT testing, production, and training).
5. Contingency plans, de- installation procedures, and software are provided by the Contractor and approved by MDIT Project Manager.
6. Final acceptance of the software will depend on the successful completion of User Acceptance Testing (UAT).
7. Testing will demonstrate the system's compliance with the requirements of the RFP. At a minimum, the testing will confirm the following:
  - a. Functional - the capabilities of the system with respect to the functions and features described in the RFP.
  - b. Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.
8. MDIT will review test software, data, and results within a mutually agreed upon timeframe.
  - a. Approvals will be written and signed by MDIT and MDCH 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.
9. MDIT will review software license agreements within a mutually agreed upon timeframe.
  - a. Approvals will be written and signed by MDIT and MDCH 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
10. 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.

### **1.600 Pricing**

State shall pay Contractor an amount not to exceed **\$241,040.00** for the performance of all activities necessary for or incidental to the performance of work as set forth in this SOW.

Both MDCH and MDIT will review all work for acceptance within 30 days from completion and/or receipt. The Vendor will not be paid for any costs attributable to corrections of any errors or omissions that have been

determined by both the MDCH and MDIT Project Managers to be occasioned by the Vendor. Payments will not be made until work is accepted.

All prices/rates quoted by the Vendor in this contract will be firm for the duration of the Contract with option to renew at the same level for two additional years. No price changes will be permitted.

Invoicing terms shall be as follows:

- Upon original contract approval/PO receipt, the contractor shall immediately bill the Initial Set-up and training fees
- All completed calls shall be invoiced on a month-to-month basis
- Annual Access Fee shall be invoiced 30 days prior to each new contract year

**1.601 Price Term**

**Labor Rates**

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

**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.

**1.700 Additional Requirements**

- 1 The Contractor, during the performance of services detailed in this contract, will be responsible for any loss or damage to original documents belonging to MDCH that are in the Contractor's possession. Restoration of lost or damaged original documents shall be at the Contractor's expense.
- 2 The Contractor shall agree that it will not volunteer, offer, or sell its services to any litigant against MDCH with respect to any services that it has agreed to perform for MDCH, provided that this provision shall not apply either when the Contractor is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the Contractor to be in violation of any Michigan or Federal law.
- 3 The Contractor will certify in writing that they are in conformance with applicable federal and state civil rights laws and practices, equal employment opportunity for all persons regardless of race, creed, color, religion, national origin, gender or handicap. The Contractor is also in conformance with the requirements of the Americans with Disabilities Act. Failure to comply with the aforementioned laws may result in the termination of the Contract.
- 4 The Contractor shall use and take advantage of existing PHI data sources created by other MDCH automation projects. These data sources shall not be duplicated without prior written approval by the MDCH and MDIT Project Managers.
- 5 The contractor must be compliant with:
  - Executive Order 11246 related to "Equal Employment Opportunity"
  - Copeland "Anti-Kickback Act" (18 U.S.C. 874)
  - Anti-Lobbying Act
  - Debarment (suspension) requirements
  - Section 306 of the Clean Air Act
  - Section 308 of the Clean Water Act

**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 ("PURCHASING OPERATIONS") and DIT/DCH (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 Purchasing Operations for this Contract is:

Joann Klasko  
 Purchasing Operations  
 Department of Management and Budget  
 Mason Bldg, 2nd Floor  
 530 W. Allegan  
 PO Box 30026  
 Lansing, MI 48933  
 Email: [KlaskoJ@michigan.gov](mailto: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 Acquisition Services, 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 the Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Sara Williams  
 Department of Information Technology  
 Chandler Building  
 300 E. Michigan  
 Lansing, MI 48913  
 Email: [williamss11@michigan.gov](mailto:williamss11@michigan.gov)  
 Phone: (517)335-7712

## 2.016 PROJECT MANAGER

The following individuals will oversee the project:

Name: Lindy Myers  
Department of Information Technology  
Department of Information Technology  
Chandler Building  
300 E. Michigan  
Lansing, MI 48913  
Email: [myers@michigan.gov](mailto:myers@michigan.gov)  
Phone: (517)373-3926

From the Michigan Department of Community Health:

Name: Ms. Alethia Carr  
Department of Community Health  
2150 Apollo Drive  
Lansing, MI – 48909  
[carra@michigan.gov](mailto:carra@michigan.gov)  
Phone: 517-335-9299  
Fax: 517-335-9444

### 2.020 Contract Objectives/Scope/Background

#### 2.021 Background

Reserved

#### 2.022 Purpose

Reserved

#### 2.023 Objectives and Scope

Reserved

#### 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**

**Reserved**

## **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**

**Reserved**

## **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/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,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**

(a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order’s accompanying Statement of Work.

(b) *(Only used for IT Contracts)* 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**

Reserved

**2.063 Hardware**

Reserved

**2.064 Equipment to be New and Prohibited Products**

Reserved

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) [USE ONLY IF CONTRACT INCLUDES SERVICES]**

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**

**Reserved**

### **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**

Reserved

**2.085 Process for Approval of Custom Software Deliverables**

Reserved

**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** 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, for 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](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**

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004, requires all payments be transitioned over to EFT by October, 2005.

## **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, 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.

### **2.112 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 within ten (10) days 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**

**2.161c 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.

#### **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**

**Reserved**

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

**Reserved**

#### **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 ninety (90)

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  
Reserved**

**(d) Third-party Software Warranty  
Reserved**

**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  
Reserved**

**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](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 Acquisition Services, 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 Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, 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 INSURED(S) 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 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**

### **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 Acquisition Services, 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 Acquisition Services, 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:

(i) 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 the Purchasing Operations.

(ii) 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.

(iii) Contractor shall also notify Acquisition Services 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**

Reserved

### **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  
 Purchasing Operations  
 Attention: Joann Klasko  
 530 West Allegan, 2<sup>nd</sup> Floor  
 Mason Building.  
 Lansing, Michigan 48933

with a copy to:  
 State of Michigan  
 Department of Information Technology  
 Attention: Sara Williams  
 300 E. Michigan  
 Chandler Building  
 Lansing, Michigan 48913

Contractor(s):  
US Netcom Corp.  
710 South Maiden Lane  
Joplin, MO 64801  
Janice Espinosa

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

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

**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 [Optional]**

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://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/codification/executive_order/12549.html)
- [http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)
- <http://www.epls.gov/epl/servlet/EPLSearchMain/1>

**Attachment A - Pricing**  
**US Netcom Corp**  
**710 South Maiden Lane**  
**Joplin, MO 64801**  
**1-800-695-7788**

**US Netcom's PhoneMaster Priority Messaging Service**  
**Scope of Services and Contract Prices**

**Initial Set-up Fee:**  
\$1,540.00

**On-site Training:**  
\$1,500.00

**Cost Per Call:**  
\$0.06 per completed call

**Annual Access Fee:**  
\$1,000.00

**Additional Customization Fee Outside the Original Scope of Service Agreement:**  
\$135.00 per hour

**Contract Payment Terms:**

- Prices shall remain in effect for five years from contract start date with option to renew at the same level for two additional years.
- The State of MI shall have 30 days from original invoice date to remit payment to US Netcom.
- Invoicing terms shall be as follows:
  - \*Upon original contract approval/PO receipt, US Netcom shall immediately bill the Initial Set-up and Training fees.
  - \*All completed calls shall be invoiced on a month-to-month basis.
  - \*Annual Access Fee shall be invoiced 30 days prior to each new contract year.

**Sample Appointment Reminder Call Script – Person Answer**

Prompt#	Section	Sample
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1 .....Greeting.....Hello, this is the "County Name" WIC Program with an appointment reminder call.

2 .....Accept Call.....If you can take this message, please press 1. If you would like us to call back later, press 2. If this is the wrong number, press 3.

(#1) Accept.....(Proceed to "3 .....Name, Date and Time" below)

(#2) Call Back..... You will receive a call back later.

(#3) Wrong Number ..... We apologize for the inconvenience. Thank you for your time.

3.....Name, Date & Time....."Participant Name(s)" has an appointment at the "Clinic Name" clinic on "Day of the week", "Month & Day number" at "Appt Time".

4.....Confirmation.....To confirm this appointment, press 1. To reschedule, press 2.

(#1) Confirm..... (Proceed to message for the appointment type.)\*

(#2) Reschedule..... Please call the WIC office between 8:30 AM and 4:30 PM, Monday through Friday, at "Clinic phone number".

..... CERT/PCERT ..... Please bring identification for yourself and the person(s) listed, your child's shot record if the appointment is for a child, proof of current address and household income or MIHealth/Medicaid cards. If you are pregnant, please bring proof of pregnancy.

\* ..... RECERT ..... Please bring your Michigan WIC Bridge Card, the person(s) listed, your child's shot record if the appointment is for a child, and proof of household income or MIHealth/Medicaid cards.

\* ..... EDU ..... Please bring your Michigan WIC Bridge Card so that you may receive your next benefits..

\* ..... IEVAL..... Please bring your Michigan WIC Bridge Card, your baby, and his/her shot record. During this visit, you'll be able to discuss and receive information about feeding your baby.

\* ..... FRXR ..... Our records show that your or your child's formula prescription will expire soon. To continue receiving this formula, you must bring in a new prescription at your next appointment. The WIC staff will determine if this formula can be provided. The prescription must include health condition/diagnosis, name of formula prescribed, length of prescription and Doctor's signature.

\* ..... RDSCS ..... At your last visit to the WIC clinic it was determined that your family may benefit from Registered Dietitian services. The Registered Dietitian will work with you to create a plan of care to address your unique nutritional needs.

\* ..... NCRD ..... Please bring the person(s) listed below to the appointment. During this appointment, you'll be able to discuss any questions that you may have with a Registered Dietitian, and receive tips for healthy eating.

\* ..... BIOD ..... Our records show that you are overdue to receive their WIC benefits.

\* ..... MAPT ..... Our records show that you missed your recent WIC appointment.

5 .....Closing .....If you have questions, please call the WIC office between 8:30 AM and 4:30 PM, Monday through Friday, at "Clinic phone number".

6 .....Goodbye..... Thank you and remember, breastfeeding gives your baby the best start. Have a good day.

Only one msg is played based on the appt type.

**Appointment Reminder Call Script – Answering Machine**

Prompt#	Section	Sample
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1	Greeting	Hello, this is the " <u>County Name</u> " WIC Program with an appointment reminder call.
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2	Name, Date & Time	" <u>Participant Name(s)</u> " has an appointment at the " <u>Clinic Name</u> " clinic on " <u>Day of the week</u> ", " <u>Month &amp; Day number</u> " at " <u>Appt Time</u> ".
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Only one msg is played based on the appt type.

*	CERT/PCERT	Please bring identification for yourself and the person(s) listed, your child's shot record if the appointment is for a child, proof of current address and household income or MIHealth/Medicaid cards. If you are pregnant, please bring proof of pregnancy.
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*	RECERT	Please bring your Michigan WIC Bridge Card, the person(s) listed, your child's shot record if the appointment is for a child, and proof of household income or MIHealth/Medicaid cards.
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*	EDU	Please bring your Michigan WIC Bridge Card so that you may receive your next benefits..
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*	IEVAL	Please bring your Michigan WIC Bridge Card, your baby, and his/her shot record. During this visit, you'll be able to discuss and receive information about feeding your baby.
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*	FRXR	Our records show that your or your child's formula prescription will expire soon. To continue receiving this formula, you must bring in a new prescription at your next appointment. The WIC staff will determine if this formula can be provided. The prescription must include health condition/diagnosis, name of formula prescribed, length of prescription and Doctor's signature.
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*	RDSCS	At your last visit to the WIC clinic it was determined that your family may benefit from Registered Dietitian services. The Registered Dietitian will work with you to create a plan of care to address your unique nutritional needs.
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*	NCRD	Please bring the person(s) listed below to the appointment. During this appointment, you'll be able to discuss any questions that you may have with a Registered Dietitian, and receive tips for healthy eating.
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*	BIOD	Our records show that you are overdue to receive their WIC benefits.
---	------	----------------------------------------------------------------------

*	MAPT	Our records show that you missed your recent WIC appointment.
---	------	---------------------------------------------------------------

3	Closing	If you have questions, please call the WIC office between 8:30 AM and 4:30 PM, Monday through Friday, at " <u>Clinic phone number</u> ".
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4	Goodbye	Thank you and remember, breastfeeding gives your baby the best
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Michigan Local Agencies

ID	Local Agency Name
1	DISTRICT HEALTH DEPT #2
2	L M A S WIC PROGRAM
4	DISTRICT HEALTH DEPARTMENT #4
5	NW MICHIGAN COMM. HEALTH AGY.
6	CENTRAL MICH DIST WIC PROGRAM
7	WESTERN U P DISTRICT HLTH DEPT
8	BARRY-EATON DIST HEALTH DEPT
9	BAY COUNTY HEALTH DEPARTMENT
10	GR TRAVERSE HEALTH DEPT
11	BERRIEN COUNTY WIC PROGRAM
12	BRANCH-HILLSDALE-ST JOSEPH DHD
13	CALHOUN COUNTY WIC PROGRAM
14	BENZIE-LEELANAU HEALTH DEPT
15	INTERCARE COMM HEALTH NETWORK
17	CHIPPEWA COUNTY WIC PROGRAM
19	MID-MICHIGAN WIC PROGRAM
21	DELTA MENOMINEE DIST WIC PROG
22	DICKINSON-IRON DIST HLTH DEPT
25	GENESEE COUNTY WIC PROGRAM
30	HEALTH DELIVERY INC WIC PROG.
32	HURON COUNTY HEALTH DEPARTMENT
33	INGHAM CO WIC PROGRAM
35	KEWEENAW BAY TRIBAL CENTER
37	IONIA COUNTY HEALTH DEPT
38	JACKSON CO WIC PROGRAM
39	KALAMAZOO CO WIC PROG
40	KALAMAZOO FAMILY HEALTH CTR
41	KENT CO HEALTH DEPT
43	DISTRICT HEALTH DEPT. #10
44	LAPEER COUNTY HEALTH DEPT
45	TUSCOLA COUNTY HEALTH DEPT
46	COMMUNITY ACTION AGENCY
47	LIVINGSTON CO HEALTH DEPT.
50	MACOMB CO WIC PROGRAM
51	DCS
52	MARQUETTE CO. HEALTH DEPT.
56	MID-MICH COMMUNITY ACTION AGY
58	MONROE CO WIC PROGRAM
61	MUSKEGON CO WIC PROGRAM
63	OAKLAND CO WIC PROGRAM
73	SAGINAW COUNTY WIC PROG
74	ST CLAIR CO WIC PROGRAM
76	SANILAC COUNTY HEALTH DEPT
78	SHIAWASSEE CO WIC PROG
81	WASHTENAW CO WIC PROGRAM
82	WAYNE COUNTY WIC PROGRAM
89	URBAN LEAGUE - DETROIT
90	DETROIT DEPT HEALTH & WELLNESS
91	CHILDRENS HOSP METABOLIC CLINC



### Michigan WIC Appointments and Reminders

MI-WIC Appointment Type	Explanation
Certification (CERT)	Used for certification of "first time" WIC applicants, or applicants previously on WIC but who were terminated more than five months ago. These applicants require appointments scheduled within 10 or 20 days of the application date
Priority Certification (P CERT)	This is an optional appointment type, intended for use by agencies that wish to designate scheduling blocks for <u>only</u> the certification of priority applicants. These applicants include pregnant women, infants less than 6 months of age, homeless, and migrant farm workers and their family members.
Recertification (RECERT)	Used for all clients who have an active record and whose certification period is expiring, and for previous WIC clients who have been terminated within the last 5 months.
Benefit Pick-up/Nutrition Education (EDU)	Used for clients who are in a valid certification period who are scheduled for a nutrition education class and/or benefit pick-up.
Registered Dietitian/Nutrition Counseling (NCRD)	Used for participants who are in a valid certification period and who are scheduled for an RD appointment.
Project FRESH (PFRESH)	Used for Project FRESH education and coupon issuance.
Infant Evaluation (IEVAL)	Used for infant's mid-certification evaluation appointment.
Formula Prescription (FRXR)	Prescription reminder for special formula that are due to expire
Registered Dietitian Services (RDSCS)	High risk care planning appointment
Benefits Overdue (BIOD)	Reminder indicating that benefits are due
Missed Appointments (MAPT)	Reminder for missed appointments