

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

May 11, 2009

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B9200011**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

<b>NAME &amp; ADDRESS OF VENDOR</b>		<b>TELEPHONE Edward Boychuk (810) 720-3820 x 2105</b>	
Convergent Technology Partners 801 South Saginaw Street, Suite 505 Flint, MI 48502		<b>VENDOR NUMBER/MAIL CODE</b>	
		<b>BUYER/CA (517) 241-7233 Joann Klasko</b>	
<b>Email:</b>			
Contract Compliance Inspector: Michael Breen DIT Telcom Design Services - Statewide			
<b>CONTRACT PERIOD:</b>		<b>From: October 10, 2008</b>	<b>To: October 9, 2013</b>
<b>TERMS</b>	<b>SHIPMENT</b>		
N/A	N/A		
<b>F.O.B.</b>	<b>SHIPPED FROM</b>		
N/A	N/A		
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			

**THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT THROUGH MIDEAL.**

**NATURE OF CHANGE(S):**

Effective immediately, this change notice is issued to include this vendors services to authorized members of the MiDeal Program. All other terms and conditions remain the same.

**AUTHORITY/REASON(S):**

Per vendor and agency concurrence.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,000,000.00.**

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N/A	N/A
<b>MINIMUM DELIVERY REQUIREMENTS</b> N/A	
<b>MISCELLANEOUS INFORMATION:</b> <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: \$3,000,000.00</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 our inquiry bearing the req No. 084R8200162.

<b>FOR THE VENDOR:</b> <b>Convergent Technology Partners</b> <hr/> Firm Name  <hr/> Authorized Agent Signature  <hr/> Authorized Agent (Print or Type)  <hr/> Date	<b>FOR THE STATE:</b> <hr/> Signature <b>Greg Faremough, Director</b> <hr/> Name IT Division <hr/> Title  <hr/> Date
--	---



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

**Contract No. 071B9200011**  
**DIT Design Services for Data & Communications *Information Transport Systems-Statewide***

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

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**APPENDICES**

- APPENDIX A – Facilities
- APPENDIX B – CORPORATE RESUME FORM
- APPENDIX C – RCDD RESUME FORM
- APPENDIX D – PROJECT MANAGER RESUME FORM

Abbreviations and Definitions

CFR	The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.
Data flow	Exchange Network term for any routine exchange of information between two or more network partners.
DIT	Michigan Department of Information Technology
EPA	U.S. Environmental Protection Agency. Additional info at: <a href="http://www.epa.gov">http://www.epa.gov</a>
ERP	Environmental Results Program – Additional info at: <a href="http://www.epa.gov/permits/erp/index.htm">http://www.epa.gov/permits/erp/index.htm</a>
Flow Configuration Document	aka FCD. A document that is intended to define the supported data services and processes that are used to exchange information. The FCD serves as a guide for trading partners the details and challenges associated with a specific flow. Additional info at: <a href="http://www.exchangenetwork.net">http://www.exchangenetwork.net</a>
ID	Identification number
ITB	Invitation to Bid
MBE/WBE	Minority Business Enterprises / Women Business Enterprises
MDEQ	Michigan Department of Environmental Quality
MERP	Michigan Environmental Results Program
MS	Microsoft
.NET	.NET is the Microsoft Web services strategy to connect information, people, systems, and devices through software.
Node	A Network Node is a web server that facilitates the interface between back-end database systems and the Network. It is an entity's "point of presence" on the Exchange Network. Using standards-based web services and eXtensible Markup Language (XML) schema, Nodes securely initiate and respond to requests for information. Additional info at: <a href="http://www.exchangenetwork.net">http://www.exchangenetwork.net</a>
OCR	Optical Character Recognition
PHIN	Public Health Information Network
PIN	Personal Identification Number
PMBOK	Project Management Body of Knowledge
PMI	Project Management Institute
PMM	Project Management Methodology
QA	Quality Assurance
RFP	Request for Proposal
RTC	Return to Compliance
SBRA	Small Business in Rural Areas
Schema	Files that serve as the framework for defining the data elements and rules in an XML document. Schema express shared vocabularies and allow computers to carry out rules made by people.



SOW	Statement of Work
TRG	Technical Resources Group. Additional info at: <a href="http://www.exchangenetwork.net">http://www.exchangenetwork.net</a>
XML	aka eXtensible Markup Language. An open standard language used to create files for exchanging and displaying data. XML is an outgrowth of Standard Generalized Markup Language and provides a standard method for describing data based upon a syntax developed by the World Wide Web Consortium (W3C).

Glossary Specific to This ITB

ANSI	American National Standards Institute
ATM	Asynchronous Transfer Mode
BICSI	Building Consulting Services International
DB	Decibel
DIT	Department of Information Technology
EIA	Electronic Industries Alliance
IT	Information Technology
ITS	Information Transport System
MIOSHA	Michigan Occupational Safety and Health Administration
NEC	National Electric Code
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
OSI	Open System Interconnection
OSP	Outside Plant
OTDR	Optical Time Domain Reflectometer
PBX	Private Business Exchange
PMM	Project Management Methodology
RCDD	Registered Communication Distribution Designer
TIA	Telecommunications Industry Association
UL	Underwriters Laboratories
UTP	Unshielded Twisted Pair



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

### **1.0 Project Identification**

#### **1.001 PROJECT REQUEST**

The State of Michigan (State), through the Michigan Department of Management & Budget (DMB), with assistance of the Michigan Department of Information Technology (MDIT), has issued this contract for telecommunication design services to provide communication infrastructure design, project management and quality assurance services. The communication infrastructure may include, but not limited to, Information Transport Systems (ITS) both inside and outside plant, pathways, telecommunication rooms, permits, etc. Services will be provided in State owned and/or leased buildings and on campuses which may require new and /or upgraded telecommunication facilities. The contractor must have on staff a BICSI Registered Communication Distribution Designer (RCDD), which holds an active certification.

The telecommunications design company is to provide services for the Department of Information Technology in support of any State agency requesting these services.

To the best of the State's knowledge, the information provided is accurate. However, the State does not warrant such accuracy, and any variations subsequently determined will not be construed as a basis for invalidating the contract. The State reserves the right to cancel this contract or any part of this contract, at any time.

This contract will be for five (5) years with the possibility of two (2) one year extensions at the State's discretion.

#### **1.002 BACKGROUND**

The Michigan Department of Information Technology, Telecommunications and Network Management Division, is mandated to manage, maintain, and provide cost effective design, project management and quality assurance services for all required telecommunication services that enable the agencies of the State of Michigan to productively conduct their functions in a timely and cost effective manner. This telecommunications requirement is mandated in Public Act 431.

The design services are required to provide State communication network operability in support of all branches of State government. The job locations will be throughout the State of Michigan.

### **1.1 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The Contractor will provide the following services for the complete and successful completion of telecommunication engineering services being requested.

The communication infrastructure includes, but is not limited to **Information Transport Systems (ITS)** which may consist of fiber optic cable and/or copper cable to the State's communication network. Services required for the ITS may include any of the following:

- 1 Project Design and Discovery
- 2 Project Work Plan Development
- 3 Furnish a list a materials and associated equipment
- 4 Provide As Built Drawings and Specifications
- 5 Obtain Required Permits

The State seeks to have services begin upon execution of the Contract.



A more complete description of services sought for this project is provided in Section 1.104, Work and Deliverables. Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

### **1.102 OUT OF SCOPE**

The following are out of the scope for this contract:

- 1 Integration to electronic equipment including jumper cables will be handled internally by DIT.
- 2 Purchasing of equipment/software
- 3 Installation services

### **1.103 ENVIRONMENT**

#### **1) Current Technical Environment:**

- 1 8.3 micron single mode fiber optic cable
- 2 50.0 micron multi mode fiber optic cable
- 3 62.5 micron multi mode fiber optic cable
- 4 ST Connectors
- 5 SC Connectors
- 6 Termination Shelves
- 7 Mounting hardware
- 8 Terminal Strips
- 9 Equipment Racks
- 10 Distributing Frame equipment
- 11 Cat 5E UTP
- 12 Cat 6A UTP
- 13 Copper riser cables with various number of conductor pairs
- 14 Telephone ground systems
- 15 Cable Trays
- 16 Aerial Cable design
- 17 Buried conduit and cable design
- 18 Underground conduit and cable design

#### **2) Methods, Policies, Standards and Guidelines:**

Contractor is advised that the State has methods, policies, standards and guidelines 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 contract will comply with all applicable State IT policies and standards in effect at the time the contract is issued. The Contractor will request exceptions to State IT policies and standards in accordance with DIT processes. It will be the responsibility of the State to deny the exception request or to seek a policy or standards exception.

The links below will provide information on State of Michigan IT strategic plans, current environment, policies, and standards.

Strategic Plan:

Enterprise Policies, Procedures and Standards:

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

The State's Project Management Methodology (PMM) must be followed:

[http://www.michigan.gov/dit/0,1607,7-139-30637\\_31101-58009--,00.html](http://www.michigan.gov/dit/0,1607,7-139-30637_31101-58009--,00.html)

Information regarding the State's telecommunications policies and procedures may be found at:

<http://www.michigan.gov/dit/0,1607,7-139-34305-109932--,00.htm>



The Contractor and its subcontractors shall comply with all security standards and the security access requirements for individual State facilities.

#### **1.104 WORK AND DELIVERABLES**

The Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below and in the attachments.

##### **A. Requirements**

Contractor shall meet the following requirements:

1. The Contractor may be required to discuss the voice/data/video needs and requirements with the user agency's Departmental representative and review this detail with the appropriate MDIT Telecommunications personnel.
2. The Contractor may be required to make arrangements with the appropriate State contact people for the purpose of a site visit.
3. The Contractor may be required to conduct a site visit to gather information required to perform design services.
4. The Contractor may be required to perform design, quality assurance, and project management functions.
5. The Contractor may be required to submit design documents, drawings, specifications and recommendations to the proper MDIT personnel.
6. The Contractor will be required to provide quality assurance inspection reports on any auditable work performed by Contractor.
7. Design documents such as specs. CAD drawings, as-builts and any other pertinent documentation will include, but not limited to, work station locations, cable routes, cable type, length of cable runs and connecting hardware. Documents containing similar information are required for any riser system and/or horizontal tie cables, antenna systems, outside plant, etc.
8. Contractor specifications must be written in such a manner that the State approved issue of the documents can be used directly for material and installation bids. No changes and/or editing is to be required by the State or any other persons.
9. Contractor is to present specs, drawings and all pertinent information to the responsible MDIT personnel for review and agreement on design, language and documents.
10. Contractor may be required to provide assistance at cable Contractor bid walk through by showing contractors the requirements of the design and answering contractor's questions. This will include a written record of all questions and answers being provided to the State contract administrator. The State contract administrator will be responsible to provide the "official" response to all questions posed by the cable Contractors.
11. The Contractor will be required to assess the requirement for right of way and to assist the State in securing right of way. This will involve research on property ownership, filling out the necessary documents and negotiating with property owners.
12. The Contractor will be required to assist the State in securing easements when necessary. This will involve research on property ownership, filling out the necessary documents and negotiating with property owners.
13. Contractor will be required to file and negotiate pole attachment locations and any make ready work necessitated by outside plant construction, with the appropriate utilities. Pole attachment and make ready agreements will be prepared by the Contractor in conjunction with the appropriate utility and approved by the State.



14. The Contractor may be requested to perform quality inspections on work performed by the cable Contractor. The State will determine which projects and at what time interval the quality audits are required. This may be during and/or at completion of construction, cable installation process and any work process required to complete project. Quality results are to be provided to the State upon completion of the inspections.
15. Upon completion of the installation, the design Contractor shall review and/or provide certified as-built drawings and as-built specifications. Copies of the review results and/or design Contractor generated as-built drawings and as-built specs are to be turned over to the MDIT Telecommunications representative.
16. All work performed by the Contractor will conform to the State adopted Edition of the National Electric Code, the Building Code and all local codes and ordinances, as applicable at time of design. EIA/TIA Documents shall be adhered to during design activities. Methodologies outlined in the latest available edition of the BICSI Telecommunications Distribution Methods Manual shall also be used during all design activities. Should conflicts exist with the foregoing, the authority having jurisdiction for enforcement will have the responsibility for making interpretation.

## **B. Services to be Provided**

The Contractor will provide the following services for developing the end product of this project. The Contractor is not, however constrained from supplementing this listing with additional steps, subtask or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques. It is the State's responsibility to select projects and work operations which will involve the contractor. The State will submit to the contractor in writing, the selected project, contractor's involvement and requested schedule.

The State will provide to the Contractor a description of the project scope and the Contractor is to fulfill these requirements in a reasonable and timely manner. The State's needs and requirements will vary depending on the project. The Contractor must have the ability to respond on short notice. Although, short notice will be the exception, the Contractor must be aware of this possibility. There is the possibility that a Contractor may be required to contact and meet with various agencies of the State; it is also possible that total, partial, or no Contractor services may be requested. Written reports of all meetings attended and/or quality audits performed by the Contractor must be provided to the State's Contract Manager. Section 1.104.B outlines tasks, which may or may not be required by the Contractor. The State will make determination of which services, if any are required on a job by job basis.

The awarded Contractor will not have exclusivity on the functions stated below and/or in Section 1.104.B, nor are the functions stated below and/or in Section 1.104.B all inclusive of what the Contractor may be called upon to do, yet remaining within the scope of this contract. It is possible that the State may decide to undertake some of the projects in-house.

All activities that are the result of the contract, including, but not limited to, labor, inspections, project management, reports and any correspondence will be coordinated with Contractor's Contract Administrator or their duly assigned designee.

The Contractor will provide at the State's request the following:

### **1. Project Design and Discovery**

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The CONTRACTOR is not, however constrained from supplementing this listing with additional steps, subtasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques. It is the State's responsibility to select projects and work operations which will involve the contractor. The State will submit to the contractor in writing, the selected project, contractor's involvement and required schedule.



The table that follows provides an overview of a typical project process flow and associated deliverables for the project phases:

Task	Description of Tasks	Contractor Role/ (Deliverable)	State Role
Walkthrough	Identify work to be done by Contractor	Contractor to provide State with deliverable requirements as a result of the walkthrough	Schedule, identify location and inform Contractor of walkthrough
Preparation	Procurement Plan for materials, work planning and scheduling and clarification of roles	Contractor to provide project plan, list of materials to procure, identify key personnel ,and identify single point of contact,	Identify State’s project manager, co-ordinate building access and schedule project meetings
Production	Produce specifications and drawings	cable design documents	Identify and assist in resolution of problems that arise. Verify project progress quality of workmanship and materials
Control	Project meetings, status reports and site inspections	Contractor to provide status reports and attend project meetings as required	Attend project meeting as required and validate progress as reported by Contractor
Acceptance	Verify deliverables and perform final walkthrough. Project billing closeout.	Contractor validates deliverables meet or exceed acceptance expectations of the State and provides as-built drawings and check test results for each fiber that are within acceptable limits of the design. Contractor submits final invoice to include all remaining charges	State to create punchlist as result of final walkthrough. Perform final walkthrough once punchlist items have been cleared by Contractor. State project manager processes Contractor’s final invoice for payment.

**2. Project Work Plan Development**

The contractor will develop work plans and schedules. The contractor’s work plan shall indicate the number of person-hours allocated for each task. Include a PERT-type display, time related, showing each event, task, and decision point in the work plan. The work plans must be agreed upon by the DIT duly assigned project manager prior to start of job. A copy of the approved work plans along with State provided specifications and drawings will be on the job site at all times during this installation. Location of equipment must be adhered to unless a change is authorized by the duly delegated DIT Project Manager. The only person and/or persons having the authority to make changes to the work plan is/are the DIT duly assigned Project Manager(s). All changes must be approved in writing prior to change. It is conceivable that the contractor contacts the DIT Project Manager by telephone and explains the requested changes. At that point in time the Project Manager may fax to the contractor the authority for the change. Project work plans may be required as assigned by the DIT Project Manager.

**3. Provide As Built Drawings and Specifications**

As part of the services to be delivered, the Contractor will furnish two (2) complete sets of RCDD certified as-built drawings and as-built specifications as required to the DIT Telecommunications Project Manager within three weeks of project completion and installation. The Contractor must provide the State with as-built drawings that depict discrepancies, changes and additions relating to the installation



of the actual physical cable, terminations and associated equipment and hardware. The as-built drawings will be generated on drawings furnished to the Contractor by the DIT Project Manager.

The RCDD must have first hand knowledge concerning the accuracy of the as-built drawings and as-built specifications.

#### 4. Obtain Required Permits

The Contractor may be responsible to obtain any required permits for the work completed by the Contractor. The State will reimburse the contractor for the actual costs associated with obtaining the permit.

### 1.2 Roles and Responsibilities

#### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The work is to be performed, completed, and managed at various area locations throughout the State of Michigan.

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

The contractor must be staffed with at least one registered communication Distribution Designer (RCDD). The RCDD must have been an RCDD for a minimum of five (5) years and provide BICSI RCDD certification numbers. The RCDD must, at a minimum, review approve and certify with valid RCDD stamp, all designs, specifications and as-built drawings. It is preferred that the RCDD have hands on role in all design processes. The RCDD is considered to be key personnel. The contractor is to provide a resume for the proposed RCDD person on the RCDD form, **Appendix C**, for the State's review.

- 1 The Contractor must have in place a quality assurance organization which audits the Contractors work for, but not limited to, accuracy, application of standards and clarity.
- 2 The Contractor must have verifiable experience on projects in which the client was initiating a standard operating environment.
- 3 The Contractor must have verifiable experience in projects that required a significant amount of re-hab work within existing buildings.
- 4 The Contractor must have experience with leading edge technologies including, but not limited to:
  - 5 Centrex/PBX
  - 6 ISDN
  - 7 Fast Ethernet
  - 8 VOIP
  - 9 Wireless
  - 10 ATM
  - 11 Broadband and Compressed Digital Video
  - 12 VOIP
- 13 The Contractor must have the capability of developing detailed work prints and as-builts. All work prints and as-builts will be in digital format (AUTO-CAD). Certified work prints are required to be included as part of all specifications. Examples are to be included as part of your response.
- 14 The Contractor will have Outside Plant Designers on staff as the project may include the review and design of campus/OSP facilities.



- 15 The selected Contractor will have been actively engaged in supplying similar type services for a period of not less than five (5) years.
- 16 Contractor must provide that all documentation is secure from fire, theft and is kept confidential.

### **Article 1, Attachment B (Organizational Chart)**

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work. The Contractor shall submit their organizational chart with their bids and label it **Article 1, Attachment B**.

The Contractor shall complete the Key Personnel Resume Form for the following positions, including subcontractors, who will be assigned to the Contract, indicating the responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project.

1. Project Manager
2. Registered Communications Distribution Designer (RCDD)

The Contractor will commit that key-staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the State. Contractors shall complete the Key Personnel Resume Form and provide a resume for their proposed Project Manager, provided as **Appendix D**.

#### Project Manager

The State reserves the right to require a change in the current Project Manager if the assigned Project Manager is not, in the opinion of the State, adequately serving the needs of the State.

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

- 1 Support the management of the Contract
- 2 Facilitate dispute resolution
- 3 Advise the State of performance under the terms and conditions of the Contract.
- 4 Manage all defined Contractor responsibilities in this Scope of Services.
- 5 Manage Contractor's subcontractors, if any
- 6 Develop the project plan and schedule, and update as needed
- 7 Serve as the point person for all project issues
- 8 Coordinate and oversee the day-to-day project activities of the project team
- 9 Assess and report project feedback and status
- 10 Escalate project issues, project risks, and other concerns
- 11 Review all project deliverables and provide feedback
- 12 Proactively propose/suggest options and alternatives for consideration
- 13 Utilize change control procedures
- 14 Prepare project documents and materials
- 15 Manage and report on the project's budget

#### Registered Communications Distribution Designer (RCDD)

The Contractor will identify a Registered Communications Distribution Designer (RCDD) whose responsibilities shall include, but will are not limited to:

1. Verify designs
2. Perform quality inspections
3. Project Plan design



## **Project Staffing**

The design firm must be able to staff a project team which possesses talent and expertise in the fields of communication infrastructure. Include the number of executive and professional personnel by skill and qualifications that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the study or project. Identify key individuals by name and title. Indicate the amount of dedicated management time for the contractors' project manager and other key individuals. The Contractor will commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the State. Contractors shall provide resumes and all information identified in **Article 1, Attachment B, Project Plan.**

### **1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

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

The State project team will consist of the following members, with the identified responsibilities:

#### **Steering Committee**

- Stanley Paterson, MDIT Project Manager, (chairperson of the steering committee.)
- Scott Harvey, MDIT Telecommunication Manager
- Jack Harris, MDIT Telecommunications and Network Management Director

The Steering Committee will provide the following services:

1. Approve the project schedule
2. Authorize modifications for scope, resources, and budget of the project
3. Ensure senior management commitment to the project
4. Act as a final arbiter on proposed changes that significantly affect the business interests of the State

**MDIT Project Manager/Contract Manager** - Stanley Paterson, RCDD, (Registered Communications Distribution Designer)

The MDIT Project Manager/Contract Manager will provide the following services:

- Function as the State Subject Matter Expert (SME)
- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.
- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions (IT-Networking, Integrated Services, Administration, Accounting, etc.)
- Milestone acceptance sign-off
- Resolution of project issues
- Escalation of outstanding/high priority issues
- 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 all project meetings

### **Project Support** - Chris Fink

The Project Support function will provide the following services:

- Provide project support for granting access to locations, or additional project information.

### **Issue Escalation Process**

Issues shall be escalated for resolution from level 1 through level 4, as defined below:

- Level 1 – Project Support – Chris Fink
- Level 2 – Project Manager/Contract Manager– Stanley Paterson, RCDD
- Level 3 – Steering Committee Member – Scott Harvey
- Level 4 – Steering Committee Member – Jack Harris

## **1.3 Project Plan**

### **1.301 PROJECT PLAN MANAGEMENT**

#### **A. Orientation Meeting**

1. Upon thirty (30) calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract.
2. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor.
3. The State shall bear no additional cost for the time and travel of the Contractor for attendance at the meeting.

#### **B. Performance Review Meetings**

1. After the initial implementation period, the State will require the Contractor to attend bi-weekly meetings, at a minimum, to review the Contractor's performance under the Contract.
2. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor.
3. The State shall bear no additional cost for the time and travel of the Contractor for attendance at the meeting.

#### **C. Project Control**

1. The Contractor will carry out this project under the direction and control of MDIT.
2. Within ten (10) working days of receiving the project, the Contractor will submit the project plan to the State project manager(s) for final approval.
  - a. This project plan must include the following:
    - i. 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.
    - ii. The project breakdown (work plan) showing sub-projects, activities and tasks, and resources required and allocated to each.
    - iii. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the work plan.

The Contractor will manage the project in accordance with the PMBOK® (Project Management Body of Knowledge from the Project Management Institute) and the state's Project Management Methodology (PMM). Methodology is available at the following link.

[http://www.michigan.gov/dit/0,1607,7-139-30637\\_31101-58009--,00.html](http://www.michigan.gov/dit/0,1607,7-139-30637_31101-58009--,00.html)

3.

- 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.



- b. Contractor shall use automated project management tools, as reasonably necessary, in order to perform the cited Services, which shall include, through the end of the Contract, the capability to produce:
  - i. Staffing tables with names of personnel assigned to Contract tasks.
  - ii. Updates must include actual time spent on each task and a revised estimate to complete.
  - iii. Graphs showing critical events, dependencies and decision points during the course of the Contract.
- c. 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 standard is described with reasonable detail in the contract.

### **Project Control and Reports**

**State Responsibilities:** Although there will be continuous liaison with the Contractor team, the MDIT Contract Administrator or duly assigned representative will meet, as deemed necessary by the State, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

**Contractor Responsibilities:** The Contractor will carry out this project under the direction and control of the MDIT Contract Administrator or their duly assigned representative.

The Contractor will submit brief written summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. The frequency of the written summaries will depend upon the project particulars. The State will determine the frequency at which the summaries are necessary.

The contractor will submit to Michigan Department of Information Technology the following:

- 1 The Contractor's project organizational structure.
- 2 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.
- 3 The sample project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- 4 The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

### **1.302 REPORTS**

Reporting formats must be submitted to the State's Project Manager for approval within 20 business days after the effective date of the 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.

Reports are to be furnished by the Contractor weekly during the implementation period, after that, quarterly. These include all of the following:

- 1 Weekly Project status
- 2 Updated project plan
- 3 Summary of activity during the report period
- 4 Accomplishments during the report period
- 5 Deliverable status
- 6 Schedule status
- 7 Action Item status
- 8 Issues
- 9 Change Control



Progress reports showing the status of the project in respect to the planned schedule are to be generated. The frequency of these reports is up to the MDIT Contract Administrator. In-process and/or final quality verification reports covering the tasks performed on a particular project are to be submitted to the MDIT Contract Administrator. The contents and design of the quality reports will be mutually agreed upon by the contractor and the MDIT Contract Administrator.

## **1.4 Project Management**

### **1.401 ISSUE MANAGEMENT**

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

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

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

### **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 Contract. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy.

Contractor's proposal must define risks identified as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the State.

The Contractor must create a risk management plan. A risk management plan format will be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from this contract. 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 risk management plan will be developed in accordance with the State's PMM methodology and the PMBOK® (Project Management Institute).

### **1.403 CHANGE MANAGEMENT**

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

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



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

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

## **1.5 Acceptance**

### **1.501 CRITERIA**

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

All deliverables are to be complete (design drawings, specifications and quality assurance reports) and validated by the MDIT Project Manager. Clearing of punchlist items, as-built drawings, and as-built specifications will be received by the State and validated as complete by the MDIT Project Manager.

### **1.502 FINAL ACCEPTANCE**

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

## **1.6 Compensation and Payment**

### **1.601 COMPENSATION AND PAYMENT**

The resulting contract will be a firm, fixed unit priced contract. The State shall pay the Contractor an amount up to an amount not to exceed \$3,000,000.00 for up to five years with 2 one-year optional extensions at the State’s sole discretion.

All prices quoted in Contractor’s response will be firm for the duration of the Contract. No price changes will be permitted.

The prices quoted are firm for the entire length of the Contract. All time and material charges will be billed at the rates specified in Master Unit Pricing Matrix. See **Article 1, Attachment A**.

### **Payment**

Contractor will submit properly itemized invoices. Invoices shall provide and itemize, as applicable:

- 1 Contract number;
- 2 Purchase Order number
- 3 Contractor name, address, phone number, and Federal Tax Identification Number;
- 4 Description of any commodities/equipment, including quantity ordered;
- 5 Date(s) of delivery and/or date(s) of installation;
- 6 Price for each item, or Contractor’s list Price for each item and applicable discounts;
- 7 Net invoice (Net 45) Price for each item;
- 8 Shipping costs;
- 9 Other applicable charges;
- 10 Total invoice Price; and
- 11 Payment terms including any available prompt payment discounts.

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

## **1.7 Additional Terms and Conditions Specific to this SOW**

### **1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**



**Article 1, Attachment A  
Pricing**

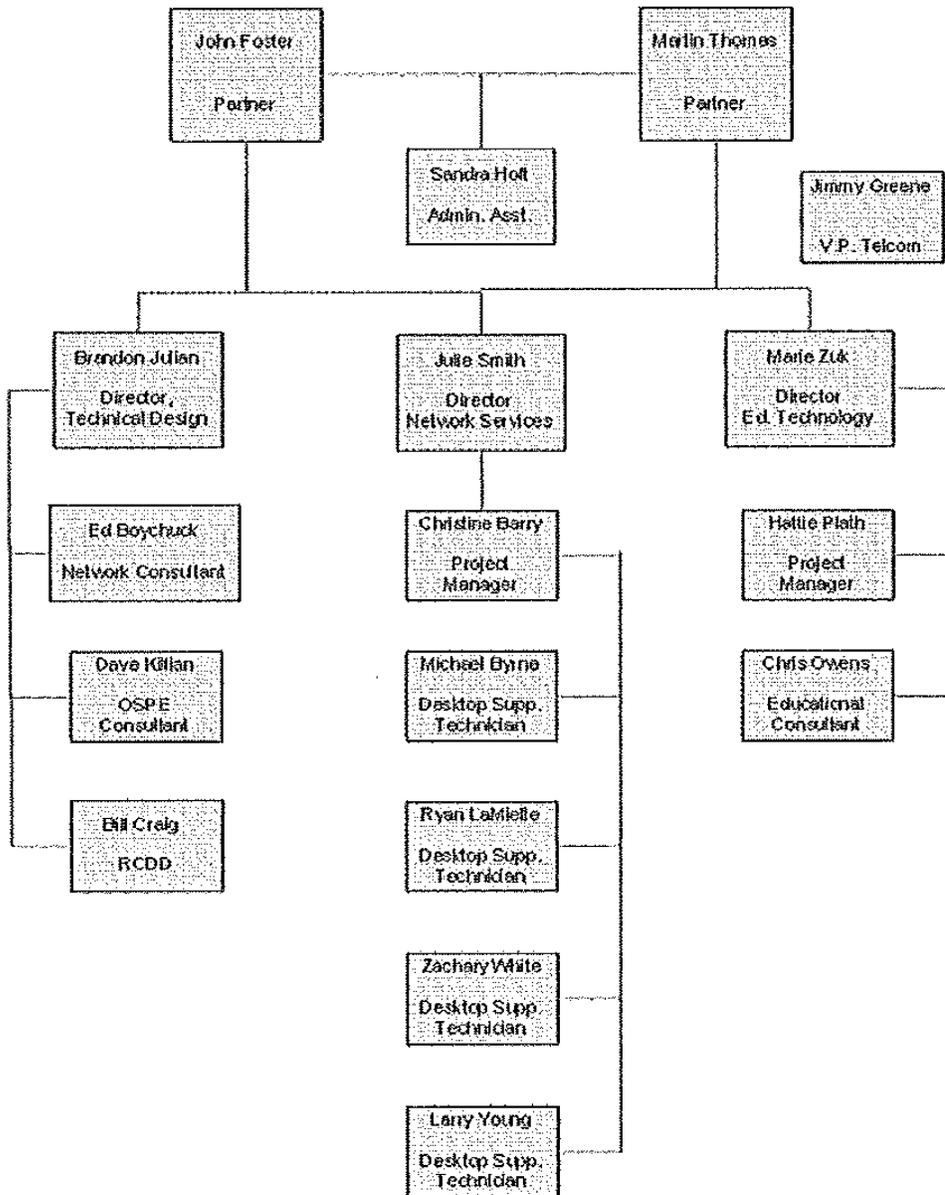
<b><u>MASTER UNIT PRICE MATRIX</u></b>	
<b><u>NAME OF UNIT</u></b>	<b><u>PRICE/UNIT</u></b>
Registered Communication Distribution Designer	\$95.00/hour
Project Manager	\$95.00/hour
Consultant	\$95.00/hour
Field Technician	\$65.00/hour
Systems Specialist	\$110.00/hour
Outside Plant Designer	\$75.00/hour
Professional Engineer	\$125.52/hour
Broadband Designer	\$95.00/hour
CAD Drafter	\$55.00/hour
Clerical Support	\$35.00/hour
Printer time	\$49.11/hour
Travel Time	\$60.00/hour
Mileage Reimbursement	State rate/mile
Travel Reimbursement (Overnight Accommodations, Meals, etc)	Receipted Costs
Project-Related Required Purchases and Expenses	Receipted Costs
One (1) E size CAD drawing	\$19.17/sheet
Two (2) E size CAD drawings	\$15.42/sheet
Three (3) E size CAD drawings	\$14.17/sheet
Four (4) E size CAD drawings	\$13.54/sheet
Five (5) E size CAD drawings	\$13.17/sheet
Six (6) E size CAD drawings	\$12.92/sheet
Seven (7) or more E size CAD drawings	\$12.75/sheet
<b>TOTAL OF ALL UNIT PRICES</b>	

**Article 1, Attachment B**

**Organizational Chart, including Key Personnel**

**Convergent Technology Partners  
Organization Chart**

As of September  
2007





## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### 2.011 Definitions

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

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

#### 2.012 Attachments and Exhibits

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

#### 2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or



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

**2.014 Issuing Office**

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

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

**2.015 Contract Compliance Inspector**

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

Mike Breen  
Department of Information Technology  
Constitution Hall, 1st Floor, North  
525 W. Allegan  
Lansing, MI 48913  
Email: Breenm@michigan.gov  
Phone: (517)241-7720

**2.016 Project Manager**

The following individual will oversee the project:

Name: Stan Paterson  
Department of Information Technology  
Address: 3068 West Grand Blvd. Suite 7-500  
City: Detroit  
State & Zip MI, 48202  
Email: Patersons@michigan.gov  
Phone: (313)456-4007  
Fax: (313)456-4800

**2.020 Contract Objectives/Scope/Background****2.021 Background**

Please see Section 1.002 Background.

**2.022 Purpose**

The purpose of this contract is to obtain telecommunication design services to provide communication infrastructure design, project management and quality assurance services for the State of Michigan departments.

**2.023 Objectives and Scope**

Please see Section 1.1 Scope of Work and Deliverables.

**2.024 Interpretation**

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

**2.025 Form, Function and Utility**

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

**2.030 Legal Effect and Term****2.031 Legal Effect**

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

**2.032 Contract Term**

This Contract is for a period of five (5) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**



This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

## **2.040 Contractor Personnel**

### **2.041 Contractor Personnel**

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

(b) Key Personnel

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

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

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

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

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



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

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

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

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

(e) Staffing Levels.

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

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

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.



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

#### **2.042 Contractor Identification**

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

#### **2.043 Cooperation with Third Parties**

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

#### **2.044 Subcontracting by Contractor**

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

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

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor



engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

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

#### **2.045 Contractor Responsibility for Personnel**

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

### **2.050 State Standards**

#### **2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_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

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

### 2.062 Software

### 2.063 Hardware

### 2.064 Equipment to be New and Prohibited Products

#### (a) Equipment to be New

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

#### (b) Prohibited Products

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

## **2.070 Performance**

### 2.071 Performance, In General

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

### 2.072 Time of Performance

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

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

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

### 2.073 Liquidated Damages

The parties acknowledge that [certain event] 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 such delay. Therefore, Contractor and the State



agree that in the case of any such [certain event] in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against Contractor as specified in this Section.

If [certain event] occurs, then the State shall be entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy [certain event]. [Dollars must be an accurate representation of reasonably foreseeable damages attributable to losses incurred by the occurrence of the certain event. Please contact the Buyer for more information.]

**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**

**RESERVED**

**2.080 Delivery and Acceptance of Deliverables**

**2.081 Delivery Responsibilities**

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.



## 2.082 Delivery of Deliverables

(a) Where applicable, the Statements of Work/POs contain lists 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”), a good (“Physical Deliverable”) or a Service. 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 the Contract.

## 2.083 Testing

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service 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 or Service 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.

(b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State’s review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

## 2.084 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services 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 will include the successful completion of Testing as applicable in **Section 2.083**, 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.

(b) The State’s obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in accordance with **Section 2.083(a)**.

(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service 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/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, 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 the 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/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. 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.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service 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 stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

### **2.085 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the



described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

## **2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

## **2.090 Financial**

### **2.091 Pricing**

#### (a) Fixed Prices for Services/Deliverables

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

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

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

#### (c) Services/Deliverables Covered

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

#### (d) Labor Rates

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

### **2.092 Invoicing and Payment Procedures and Terms**

#### (a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, 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**

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



## **2.100 Contract Management**

### **2.101 Contract Management Responsibility**

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

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

### **2.102 Problem and Contract Management Procedures**

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

### **2.103 Reports and Meetings [Any Mandatory Reports or Meetings should be included in the Statement of Work]**

#### (a) Reports.

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

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

#### (b) Meetings.

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



### 2.104 System Changes

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

### 2.105 Reserved

### 2.106 Change Requests

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

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

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

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of



such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

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

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

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

## **2.107 Management Tools**

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

## **2.110 Records and Inspections**

### **2.111a Records and Inspections**

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

(b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become



publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

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

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

## **2.112 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**

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

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

## **2.163 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**

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

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

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its



Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

## **2.167 General Skills**

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

## **2.170 Warranties And Representations**

### **2.171 Warranties and Representations**

[Additional Contract specific warranties may be included here, such as specific industry standards, professional standards, etc.]

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 RESERVED**

#### **2.173 Equipment Warranty RESERVED.**

#### **2.174 Physical Media Warranty**

(a) Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

#### **2.175a DISCLAIMER**

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

#### **2.175b Standard Warranties**

##### **(a) Warranty of Merchantability**

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



(b) Warranty of fitness for a particular purpose

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

(c) Warranty of title

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

## 2.176 Consequences For Breach

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

## 2.180 Insurance

### 2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

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

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice,



except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

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

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

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

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

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

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

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

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

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



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

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

## **2.190 Indemnification**

### **2.191 Indemnification**

(a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys'



fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent/Copyright Infringement Indemnification

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

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

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys’ fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

**2.192 Continuation of Indemnification Obligations**

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

**2.193 Indemnification Procedures**

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or



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

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

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

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

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

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

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



## 2.202 Excusable Failure

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

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

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

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.203 Disaster Recovery

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

### **2.210 Termination/Cancellation by the State**

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

### **2.211 Termination for Cause**

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of



breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

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

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

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

## **2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

## **2.213 Non-Appropriation**

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

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



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

#### **2.214 Criminal Conviction**

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

#### **2.215 Approvals Rescinded**

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

#### **2.216 Rights and Obligations Upon Termination**

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

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

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



## 2.217 Reservation of Rights

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

## 2.218 Contractor Transition Responsibilities

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

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

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

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

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

## 2.219 State Transition Responsibilities

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

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

## 2.220 Termination by Contractor

### 2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to



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

## **2.230 Stop Work**

### **2.231 Stop Work Orders**

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

### **2.232 Cancellation or Expiration of Stop Work Order**

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

### **2.233 Allowance of Contractor Costs**

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

## **2.240 Reserved**

## **2.250 Dispute Resolution**

### **2.251 In General**

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



## 2.252 Informal Dispute Resolution

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

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

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

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

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

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

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

## 2.253 Injunctive Relief

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

## 2.254 Continued Performance

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

## 2.260 Federal and State Contract Requirements

### 2.261 Nondiscrimination

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



## 2.262 Unfair Labor Practices

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

## 2.263 Workplace Safety and Discriminatory Harassment

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

## 2.270 Litigation

### 2.271 Disclosure of Litigation

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

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

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

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

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

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

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



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

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

### **2.272 Governing Law**

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

### **2.273 Compliance with Laws**

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

### **2.274 Jurisdiction**

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

## **2.280 Environmental Provision**

### **2.281 Environmental Provision**

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

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan



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

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

## **2.290 General**

### **2.291 Amendments**

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

### **2.292 Assignment**

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

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

### **2.293 Entire Contract; Order of Precedence**

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

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

### **2.294 Headings**

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



## 2.295 Relationship of the Parties (Independent Contractor Relationship)

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

## 2.296 Notices

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

State:

State of Michigan  
DMB-Purchasing Operations  
Attention: Joann Klasko  
Mason Building, 2<sup>nd</sup> Floor  
530 West Allegan  
Lansing, Michigan 48933

with a copy to:

State of Michigan  
Department of Information Technology  
Attention: Mike Breen  
525 West Allegan  
Constitution Hall, 1<sup>st</sup> Floor, North  
Lansing, Michigan 48913

Contractor(s): Convergent Technology Partners  
Name: Edward Boychuk  
Address: 801 South Saginaw Street, Suite 505  
Flint, MI 48502

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

### (b) Binding Commitments

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

## 2.297 Media Releases and Contract Distribution

### (a) Media Releases

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



(b) Contract Distribution

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

### **2.298 Reformation and Severability**

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

### **2.299 Consents and Approvals**

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

### **2.300 No Waiver of Default**

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

### **2.301 Survival**

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

### **2.302 Covenant of Good Faith**

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

### **2.303 Permits**

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

### **2.304 Website Incorporation**

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

### **2.305 Taxes**

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

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



### **2.306 Prevailing Wage**

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

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

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

### **2.307 Call Center Disclosure**

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

### **2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

#### **2.310 Reserved**

#### **2.320 Extended Purchasing**

### **2.321 MiDEAL**

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

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



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

### **2.322 State Employee Purchases**

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

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

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

### **2.330 Federal Grant Requirements**

#### **2.331 Federal Grant Requirements**

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

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

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://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/epls/servlet/EPLSearchMain/1>

**APPENDIX A**

The following type of facilities may have a negotiated labor price factor applied to only the labor portion of the unit prices when working in:

- Maximum Security Prison
- Minimum Security Prison
- Maximum Security Mental Hospital
- Minimum Security Mental Hospital
- Maximum Security Juvenile Facility
- Minimum Security Juvenile Facility

It is proper to assume there will be times when workers are not allowed to perform work due to State imposed reasons in the above stated type of facilities. When this work delay occurs the State will assume some financial responsibility for the personnel that are inhibited from performing their work assignments. The State **MUST** be notified that this condition is occurring at the **start** of such work restriction. The person to be notified is the MDIT duly designated Project Manager. The duly authorized MDIT Project manager is the **only** person that can approve payment for such work restriction. Only for persons assigned to and are physically at the job site will billing for lost man-hours be allowed. At the time of such notice the MDIT Project Manager will determine whether to keep the workers at the site or release the workers so the contractor can utilize them at other contractor sites. The billing for lost man-hours, as agreed to by the Project Manager, will be at the following rates:

**Contractor to supply all applicable job classifications.**

<u>Job Classification</u>	<u>Hourly Rate</u>
First Line Supervisor	_____
Project Manager	_____
Cable Installer	_____

The following eleven (11) pages are included for information only. They describe special working rules when working in facilities as stated (above) in this Attachment. They are the basis for the State of Michigan allowing up to a 40 % factor in labor prices when performing work in secured facilities as stated above. To determine the labor amounts to which the labor factor will be applied, the contractor must include a pricing sheet which shows the labor portion of the price for each item addressed in the unit pricing sheets in Attachment **C**.

**END OF ATTACHMENT C**



I. General:

- A. The Work comprising this Project will be performed in a hospital for treatment of mentally ill persons and the Contractor shall comply with the following Special Working Rules.
1. Contractor shall submit a list of names, social security numbers, birth dates, and additional information when requested, on all persons expected to be employed on the project site.
  2. Contractor will be allowed to work within or on hospital confines from 8:00 a.m. to 5:00 p.m. No Work shall be performed on Saturdays or Sundays without written permission. Other time schedules may be arranged by the Director of Security or his/her designee.
  3. All employees of the Contractor may be subject to individual body search each time they enter the hospital. Packages or containers of any kind may be opened for inspection. Lunch boxes are not permitted inside the security perimeter. All employees of the Contractor will be required to have identification cards or badges furnished by the Contractor.
  4. All trucks and other mobile equipment may be subject to inspection both on arrival and departure from the hospital. Absolutely no fraternization between patients and Contractor's employees will be tolerated.
  5. No requests for visits with patients will be granted to Contractor's employees except where such visiting originated prior to award of the contract.
  6. Contractor shall follow rules pertaining to security and parking as established by the hospital. Contractor shall observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and his/her workers may not leave the assigned Work areas.
  7. All heavy power tools and machinery such as air hammers, acetylene tanks, etc., must be removed from the inside of the security perimeter, through the assigned gate by 4:30 p.m., which is the closing time for the gate. Such heavy equipment as power shovels, compressors, welding machines, etc., can remain inside but must be immobilized in an acceptable manner. Cutting torches and cutting tools in general shall be securely locked where and as directed by the State Unit, and checked out as needed. No tools, small pipe, copper or wire shall remain on the site over night unless acceptably locked inside shanties or tool chests.
  8. There will be no exchange, loaning or borrowing of tools, equipment or manpower between hospital personnel and the Contractor.
  9. The assigned gate through which materials, equipment and vehicles must be transported will be opened upon request between the hours of 8:00 a.m. to 4:30 p.m.
  10. Sanitary facilities will be assigned by the hospital for the use of the Contractor's employees.
  11. Security personnel may be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
  12. Areas for employee parking, tool boxes, etc., shall be assigned only by hospital authorities. Remove all firearms, weapons, alcoholic beverages, drugs, medicines, or explosives from vehicles before entering hospital property. Lock vehicles when not attended.



13. The Director of this hospital retains the right to revise these "Special Working Conditions" as required to meet hospital needs.
  14. The Contractor and her/his workers shall not pick up hitchhikers or take anyone off the grounds who does not work for the Contractor.
- B. Interim Life Safety Measures (ILSM) are a series of eleven administrative actions required to be taken to temporarily compensate for the hazards posed by existing Life Safety Code (LSC) deficiencies or construction activities. Note that not all of the interim life safety measures are the responsibility of the Contractor, but are included here for informational purposes. All actions by the Contractor should be coordinated with the State Psychiatric Hospital.
1. Implementation of ILSM is required in or adjacent to all construction areas and throughout buildings with existing LSC deficiencies. ILSM apply to all personnel, including construction workers. Implementation of ILSM must begin upon project development, and be continuously enforced through project completion.
  2. ILSM are intended to provide a level of life safety comparable to that described in chapters 1-7, 31, and the applicable occupancy chapters of the 1988 edition of the LSC (NFPA 101). Each ILSM action must be documented. Except as stated below, frequencies for inspection, testing, training, and monitoring and evaluation must be established by the organization.
  3. ILSM consists of the following actions.
    - a. Ensuring exits provide free and unobstructed egress. Personnel shall receive training if alternative exits must be designated.
    - b. Ensuring free and unobstructed access to emergency departments/services and for emergency forces.
    - c. Ensuring fire alarm, detection, and suppression systems are not impaired. A temporary, but equivalent system shall be provided when any fire system is impaired. Temporary systems must be inspected and tested monthly.
    - d. Ensuring temporary construction partitions are smoke tight and build of noncombustible materials.
    - e. Providing additional fire fighting equipment and use training for personnel.
    - f. Developing and enforcing smoking policies and procedures in excess of current JCAHO standards. Smoking shall be prohibited in or adjacent to all construction areas.
    - g. Developing and enforcing storage, housekeeping, and debris removal policies and procedures that reduce the flammable and combustible fire load to the lowest level necessary for daily operations.
    - h. Conducting a minimum of two fire drills per shift per quarter.
    - i. Increasing hazard surveillance of buildings, grounds, and equipment with special attention to excavations, construction areas, construction storage, and field offices.
    - j. Training personnel when structural or compartmentation features of fire safety are compromised.
    - k. Conducting organization-wide safety education programs to ensure awareness of any LSC deficiencies, construction hazards, and these ILSM.



I. General:

- A. The Work comprising this project will be performed at a State Correctional Facility and the Contractor shall comply with the following special working rules, adopted by the Michigan Department of Corrections.
1. The Contractor shall submit a list of names, with social security numbers, full legal names and birth dates, and additional information as requested, on all persons to be employed on the project site. Such list shall be submitted directly to the Warden's office or his/her designee for approval prior to any person's appearance at the site for work assignment.
  2. All employees of the Contractor will be subject to individual body search each time they enter the correctional facility. Packages or containers of any kind will be opened for inspection. Lunch boxes are not permitted inside the security perimeter. All employees of the Contractor will be required to have identification cards or badges furnished by the Contractor and the institution.
  3. The Contractor will normally be allowed to work within or on correctional facility confines from 7:30 a.m. to 4:30 p.m. No work shall be performed on Saturdays, Sundays or State holidays without prior written permission from the Warden or their designee. Other time schedules may be set by the institution. Consideration may be given to using two shifts to minimize the length of time an area is out of service.
  4. An officer will be assigned to the working area. They may inspect and search areas under construction at any time, including the Contractor's equipment. Other officers may be available at the discretion of the facility. An officer or maintenance staff must accompany any worker movement in the facility.
  5. The Contractor shall follow rules pertaining to foot and vehicle traffic as established by the correctional facility. The Contractor shall observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and his/her workers may not leave the assigned work areas. Should an alarm sound, follow the directions of the officer assigned to the work crew.
  6. There will be no exchange, loaning or borrowing of tools, equipment or manpower between correctional facility personnel and the Contractor.
  7. The assigned gate through which materials, equipment and vehicles must be transported will be opened upon request between the hours of 8:00 a.m. and 3:30 p.m. Other times may be available at the discretion of the facility.
  8. All heavy power tools and machinery such as air hammers, acetylene tanks, etc., must be removed from the inside of the security perimeter, through the assigned gate by the closing time for the gate. Such heavy equipment as power shovels, compressors, welding machines, etc., can remain inside but must be immobilized in an acceptable manner to the institution. Cutting torches and cutting tools in general shall be locked where and as directed by the State Unit, and checked out as needed. No tools, small pipe, copper or wire shall remain on the site overnight unless acceptably locked inside shanties or tool chests.
  9. The correctional facility will designate or provide an area for storage of tools and materials (if available).
  10. All equipment, materials and tools must be inventoried and manifested in and out of the institution, and a complete inventory provided to the facility.



11. IF ANY TOOLS, MATERIALS OR EQUIPMENT ARE FOUND MISSING, NOTIFY THE OFFICER ASSIGNED TO THE CREW IMMEDIATELY.
12. The correctional facility may provide an area for the fabrication of components if the project is in an occupied building. This should be coordinated with the physical plant superintendent.
13. All trucks and other mobile equipment will be subject to inspection both on arrival and upon departure from the correctional facility. No fraternization between inmates and the contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to correctional officers.
14. No requests for visits with inmates will be granted to the Contractor's employees except where such visiting originated prior to award of contract.
15. Sanitary facilities will be assigned by the facility for use by the Contractor's employees.
16. On site areas for contracting parking, tool boxes, trailers, etc., shall be assigned by correctional facility. Remove all firearms, weapons, alcoholic beverages, drugs, medicines or explosives from vehicles before entering facility property. All vehicles must be locked when not attended.
17. The correctional facility infirmary is not available to the contractor's employees in case of accidents.
18. Should you have any questions, please contact the officer assigned or the physical plant superintendent.

The Warden of this correctional facility retains the right to revise these "Special Working Conditions" as required to meet facility needs.



I. General:

- A. The Work comprising this project will be performed at a State Correctional Facility and the Contractor shall comply with the following special working rules, adopted December 1, 1975, by the Michigan Department of Corrections.
1. Contractor shall submit a list of names, social security numbers, birth dates, and additional information when requested, on all persons expected to be employed on the project site. Such list shall be submitted directly to the Warden's office or to the Inspector for approval prior to any person's appearance at the site for Work assignments.
  2. Contractor will be allowed to work within or on Correctional Facility confines from 8:00 a.m. to 4:30 p.m. No Work shall be performed on Saturdays or Sundays without written permission. Other time schedules may be set by the State Unit. Consideration will be given to using two shifts to minimize the length of time an area is out of service.
  3. All truck and other mobile equipment may be subject to inspection both on arrival and upon departure from the Correctional Facility. Absolution no fraternization between inmates and Contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to Correctional officers.
  4. No requests for visits with inmates will be granted to Contractor's employees except where such visiting originated prior to award of the Contract.
  5. Contractor shall follow rules pertaining to foot and vehicle traffic strictly in accordance with and as established by the Correctional Facility. Contractor shall observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and his/her workers may not leave the assigned Work areas.
  6. Heavy equipment such as bulldozers and power shovels shall be locked or be immobilized in an acceptable manner, when not in use. No tools, small pipe, copper or wire will be allowed to remain on the site overnight unless acceptably locked inside shanties or tool chests. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Correctional Facility personnel and the Contractor.
  7. Sanitary facilities will be assigned by the Superintendent or the Inspector for the use of the Contractor's employees.
  8. Prison Guards will be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
  9. Areas for employee parking, tool boxes, etc., shall be assigned only by Correctional Facility authorities on the site. Remove all firearms, weapons, alcoholic beverages, medicines or explosives from vehicles before entering Facility property. Lock vehicles when not attended.
  10. Accidents - The Correctional Facility infirmary is not available to Contractor's employees.
  11. The Superintendent of this Correctional Facility retains the right to revise these "Special Working Conditions" as required to meet Facility needs.
  12. Cooperation with Owner will be required in establishing the sequencing of the work areas to minimize disruption of Facility operations.
  13. Utility shutdowns at the State Prison of Southern Michigan can only take place during weekends. Coordinate all work with the State Unit.



I. General:

- A. Contractor shall submit a list of names, social security numbers, birth dates, and additional information when requested, on all persons expected to be employed on the project site. Such list shall be submitted directly to the Superintendent's office or to the Inspector for approval prior to any person's appearance at the site for Work assignments.
- B. Contractor will be allowed to work within or on Agency confines from 7:00 a.m. to 6:00 p.m., Monday through Friday only. No Work shall be performed outside these hours without written permission from the State Unit.
- C. All employees of the Contractor may be subject to individual body search each time they enter the Agency Confines. Packages or containers of any kind may be opened for inspection. All employees of the Contractor will be required to have identification cards or badges furnished by the Contractor.
- D. There shall be no fraternization between the State residents and the Contractor's employees. Any attempt by any resident to engage in conversation or interfere in any way with a Contractor's employee shall be reported immediately to Agency staff.
- E. No firearms, weapons, explosives, alcoholic beverages, drugs, or medicines may be brought into the confines of the State Unit.
- F. Any tools or material left within the confines of the State Unit overnight must be in locked cabinets, locked rooms or otherwise secured.
- G. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Social Services personnel and the Contractor.
- H. Sanitary facilities will be assigned by the State Unit for the use of the Contractor's employees and it shall be the responsibility of the Contractor to keep said sanitary facilities in clean and neat condition.
- I. Contractor shall follow rules pertaining to foot and vehicle traffic as established by the State Unit. Contractor shall observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and his workmen may not leave the assigned Work areas.
- J. Security staff may be assigned to the work areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
- K. Keys to certain doors may be assigned to the Contractor. Such doors must be kept locked at all times.
- L. The Superintendent of the State Unit reserves the right to revise these rules as required to meet the security needs of the State Unit.

*APPENDIX B*  
*CORPORATE REFERENCE FORM*  
**Applies to prime contractor only. Provide a minimum of three (3) references.**  
**Provide all information requested.**

VENDOR:  
CONTRACTOR NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TITLE OF REFERENCED:  
PROJECT: \_\_\_\_\_

MANAGER OF REFERENCED:  
PROJECT: \_\_\_\_\_  
NAME  
\_\_\_\_\_  
TITLE                      PHONE NUMBER

**REFERENCE:**

FIRM/AGENCY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_  
NAME  
\_\_\_\_\_  
TITLE                      PHONE NUMBER

EMAIL ADDRESS \_\_\_\_\_

PROJECT DATES: \_\_\_\_\_  
STARTED                      COMPLETED

PROJECT DESCRIPTION *(Provide additional information on a separate sheet if needed)*

Objectives: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Client Benefit: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Methodology used: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor role(s) and service(s) provided:

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PROJECT DATA –

IT characteristics (type of transport media, terminations, etc.):

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# of Users: \_\_\_\_\_

# of Records: \_\_\_\_\_

# of Workstations: \_\_\_\_\_

# of Locations: \_\_\_\_\_

# of buildings: \_\_\_\_\_

Amount of outside plant installed (Copper/Fiber-Optic, Aerial, Underground, Buried):

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Network type: \_\_\_\_\_

PROJECT COMPLETION

ESTIMATED

Total Cost: \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Project competitively bid (yes or no): \_\_\_\_\_

Project Fixed Price? (yes or no): \_\_\_\_\_

ACTUAL –

Total Cost: \_\_\_\_\_

Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

PROJECT EVALUATION

Project terminated prior to successful conclusion (yes or no): \_\_\_\_\_

Total project cost increased by more than 10% (yes or no): \_\_\_\_\_

Delivery schedule extended by more than 15% (yes or no): \_\_\_\_\_

Explanation (for any items marked yes):

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## APPENDIX C PERSONNEL RESUME TEMPLATE

<b>Proposed Resource Name:</b>	
<b>Proposed Classification:</b>	<b>Registered Communications Distribution Designer RCDD</b>
<b>Key Personnel:</b>	<b>Yes X or No <input type="checkbox"/></b>
<b>If resource is associated with a subcontractor provide name of company:</b>	
<b>Percentage of time resource will be allocated to project:</b>	

**Agency:** List the required skill sets, education, certifications, and training requirements for each key personnel role. Below are examples of required skills, education and certifications and examples of vendor responses.

**Bidder:** List the skills and experience that qualify the individual for the duties and responsibilities on this project for the proposed role. Provide the name of the project(s) and the year(s) the experience was obtained.

The experience requirements detailed in the RFP are restated as follows:

Required Skills	Bidder's Response
<b>Five (5) years or more certification as a RCDD</b>	<b>Does resource have this required certification: Yes <input type="checkbox"/> or No <input type="checkbox"/></b> <i>If yes, provide letter of certification from BICSI verifying five years or more of certification and identifying the years</i>
<b>Two year degree from a university / community college or equivalent education credits</b>	<b>Does resource have this <u>preferred</u> education :Yes x or No <input type="checkbox"/></b>  <b>Description of education:</b> <i>Example: Bachelor of Science degree from University of XXXXX or two year Technology Certificate from XXXXXXXX College plus 250 hours of additional technical education credits. Provide a copy of education transcripts.</i>
<b>Five (5) years or more experience as a RCDD working on projects of similar size and scope of this RFP</b>	<b>Does resource have this required skill: Yes x or No <input type="checkbox"/></b>  <b>Name of project(s) and year(s) experience was obtained:</b> <i>Michigan Infinity Project – 1995 to 1996 Ohio Intelligence Center Project – 1998 to 2000 Etc.</i>
<b>Five (5) years or more experience as a RCDD in conducting client telecommunication needs interviews and analyses</b>	<b>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>
<b>Five (5) years or more experience as a RCDD in designing cabling, risers, equipment spaces, distribution, pathways and facilities</b>	<b>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>
<b>Five (5) years or more experience as a RCDD in developing work and bid specifications</b>	<b>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>
<b>Five (5) years or more experience as a RCDD in evaluating bids and writing reports recommending bidder selection</b>	<b>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>



<p><b>Five (5) years or more experience as a RCDD in working with architectural and engineering companies on large scale projects</b></p>	<p>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>Description of skills and experience:</p> <p>Name of project(s) and year(s) experience was obtained:</p>
<p><b>Five (5) years or more experience as a RCDD working on outside plant projects</b></p>	<p>Does resource have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></p> <p>Description of skills and experience:</p> <p>Name of project(s) and year(s) experience was obtained:</p>

List client references for work performed to meet the requirements stated above, and all projects the proposed resource has worked on in the last three (3) years. A minimum of three (3) references are required. By submission of this information, the bidder and identified key person authorize the State of Michigan to contact references and previous employers provided to verify the accuracy of the information. Provide the identified information for each:

Start Date: <i>date started on project</i>	End Date: <i>date rolled off project</i>
Client/Project: <i>Client, with contact information (i.e.: address, phone #s , and email address), and project name</i>	
Employer: <i>identify employer at the time of experience</i>	
Title/Percentage of time: <i>title of role on project and percentage of time spent on project</i>	
Description: <i>brief description of responsibilities for the project. Include software version</i>	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

**EDUCATION**

<b>Education</b>		
Degree (i.e. PhD, Master's, Bachelors)	Example: <i>Master in Engineering</i>	Year Completed: <i>1998</i>
Program	Major(s) area of study: <i>Computer Science</i>	
University	(include address) Example: <i>MSU – East Lansing, Michigan</i>	

<b>Additional Education</b>		
Degree (i.e. PhD, Master's, Bachelors)	Example: <i>Bachelors' in Business Administration</i>	Year Completed: <i>1994</i>
Program	Major(s) area of study: Example: <i>Management</i>	Minor area of study: Example: <i>Economics</i>
University	(include address) Example: <i>Central MI University, Mt. Pleasant, MI</i>	

**TRAINING** – Provide any relevant technical or professional training related to the role resource will be providing on this project.

<b>Technical or Professional Training</b>	
Course Name	
Topic	(include credit hours if applicable)
Date taken	

<b>Certifications/Affiliations</b>	
Name	
Topic/Description	
Date completed	

The Bidder must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the bidder/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to a State project the bidder must provide a letter signed by the State Project Manager releasing the individual from the project.