

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

December 11, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B9200057
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Central Michigan University Office of Research & Sponsored Programs Foust 251 Mount Pleasant, MI 48859 Monto1mj@cmich.edu	TELEPHONE (989) 774-7220 Mary Montoye
	BUYER / CA (517) 373-8622 Malynda Little
	Contract Compliance Inspector: Lieutenant Colonel Eddie Washington, (517) 336-6163 WashinE@Michigan.gov Consulting, Safety & Security Services: Personnel Resource Allocation Study for Michigan Department of State Police
CONTRACT PERIOD: From: November 6, 2008 To: December 31, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGE(S):

Effective November 26, 2008, Section 1.061 (c) is revised as follows:

1. Deliverable #01, Analysis of MSP Resources, due date is extended to 12/29/2008;
2. Deliverable #06, Final Resource Allocation Model Study and Report, due date is extended to 09/15/2009.

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

AUTHORITY/REASON:

Per vendor request dated 11/18/2008, Agency approval dated 11/25/2008, and DMB/Purchasing Operations' approval dated 11/2/6/2008.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$192,000.00

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MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and conditions of this Contract are those of Michigan Department of State Police (MSP) requisition # 551R82000109, Request for Proposal (RFP) # 071I8200302, the vendor's response and quote received 09/17/2008, and this Contract agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Orders for delivery will be issued directly by the MSP through the issuance of a Purchase Order Form.

Current Authorized Spend Limit: **\$192,000.00**

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FOR THE CONTRACTOR: <div style="text-align: center;">Central Michigan University</div> <div style="text-align: center;">Firm Name</div> <hr/> <div style="text-align: center;">Authorized Agent Signature</div> <hr/> <div style="text-align: center;">Authorized Agent (Print or Type)</div> <hr/> <div style="text-align: center;">Date</div>	FOR THE STATE: <div style="text-align: center;">Signature</div> <div style="text-align: center;">Malynda Little, Buyer Specialist</div> <hr/> <div style="text-align: center;">Name/Title</div> <div style="text-align: center;">Services Division, Purchasing Operations</div> <hr/> <div style="text-align: center;">Division</div> <hr/> <div style="text-align: center;">Date</div>
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Contract between

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

for

**Michigan State Police
Executive Division**

to provide

**Consulting for Safety & Security Services:
Personnel Resource Allocation Study and Projection Model**

Buyer Name: Malynda Little
Telephone Number: (517) 373-8622
E-Mail Address: littlem3@michigan.gov



Table of Contents

DEFINITIONS..... 7

Article 1 – Statement of Work (SOW)..... 9

1.010 Project Identification..... 9

 1.011 Project Request..... 9

 1.012 Background..... 9

1.020 Scope of Work and Deliverables..... 9

 1.021 Scope..... 9

 1.022 Work and Deliverable..... 10

1.030 Roles and Responsibilities..... 11

 1.031 Contractor Staff, Roles, and Responsibilities..... 11

 1.032 State Staff, Roles, and Responsibilities..... 13

 1.033 Other Staff, Roles, and / or Responsibilities..... 14

1.040 Project Plan..... 14

 1.041 Project Plan Management..... 14

 1.042 Reports..... 15

1.050 Acceptance..... 16

 1.051 Criteria..... 16

 1.052 Final Acceptance..... 16

1.060 Proposal Pricing..... 16

 1.061 Proposal Pricing..... 16

 A. Authorized Value..... 16

 B. Invoice Process..... 16

 C. Reimbursement and Payment Method..... 17

 1.062 Price Term..... 17

 1.063 Tax Excluded from Price..... 17

1.070 Additional Requirements..... 17

 1.071 Additional Terms and Conditions specific to this Contract..... 17

Article 2, Terms and Conditions..... 18

2.000 Contract Structure and Term..... 18

 2.001 Contract Term..... 18

 2.002 Renewal(s)..... 18

 2.003 Legal Effect..... 18

 2.004 Attachments & Exhibits..... 18

 2.005 Ordering..... 18

 2.006 Order of Precedence..... 18

 2.007 Headings..... 18

 2.008 Form, Function & Utility..... 18

 2.009 Reformation and Severability..... 19

 2.010 Consents and Approvals..... 19

 2.011 No Waiver of Default..... 19

 2.012 Survival..... 19

2.020 Contract Administration..... 19

 2.021 Issuing Office..... 19

 2.022 Contract Compliance Inspector (CCI)..... 19

 2.023 Project Manager..... 20

 2.024 Change Requests..... 20

 2.025 Notices..... 20

 2.026 Binding Commitments..... 21

 2.027 Relationship of the Parties..... 21

 2.028 Covenant of Good Faith..... 21

 2.029 Assignments..... 21



2.030 General Provisions 22

2.031 Media Releases 22

2.032 Contract Distribution 22

2.033 Permits 22

2.034 Website Incorporation 22

2.035 Future Bidding Preclusion 22

2.036 Freedom of Information 22

2.037 Disaster Recovery 22

2.040 Financial Provisions 22

2.041 Fixed Prices for Services/Deliverables 22

2.042 Adjustments for Reductions in Scope of Services/Deliverables 22

2.043 Services/Deliverables Covered 22

2.044 Invoicing and Payment – In General 23

2.045 Pro-ration 23

2.046 Antitrust Assignment 23

2.047 Final Payment 24

2.048 Electronic Payment Requirement 24

2.050 Taxes 24

2.051 Employment Taxes 24

2.052 Sales and Use Taxes 24

2.060 Contract Management 24

2.061 Contractor Personnel Qualifications 24

2.062 Contractor Key Personnel 24

2.063 Re-assignment of Personnel at the State’s Request 25

2.064 Contractor Personnel Location 25

2.065 Contractor Identification 25

2.066 Cooperation with Third Parties 25

2.067 Contractor Return of State Equipment/Resources 25

2.068 Contract Management Responsibilities 26

2.070 Subcontracting by Contractor 26

2.071 Contractor Full Responsibility 26

2.072 State Consent to Delegation 26

2.073 Subcontractor Bound to Contract 26

2.074 Flow Down 26

2.075 Competitive Selection 26

2.080 State Responsibilities 26

2.081 Equipment 26

2.082 Facilities 27

2.090 Security 27

2.091 Background Checks 27

2.092 Security Breach Notification 27

2.100 Confidentiality 27

2.101 Confidentiality 27

2.102 Protection and Destruction of Confidential Information 28

2.103 Exclusions 28

2.104 No Implied Rights 28

2.105 Respective Obligations 28

2.110 Records and Inspections 28

2.111 Inspection of Work Performed 28

2.112 Examination of Records 29

2.113 Retention of Records 29

2.114 Audit Resolution 29

2.115 Errors 29



2.120 Warranties 29

2.121 Warranties and Representations 29

2.122 Warranty of Merchantability 30

Deleted – Not Applicable 30

2.123 Warranty of Fitness for a Particular Purpose 31

2.124 Warranty of Title 31

2.125 Equipment Warranty 31

Deleted – Not Applicable 31

2.126 Equipment to be New 31

Deleted – Not Applicable 31

2.127 Prohibited Products 31

Deleted – Not Applicable 31

2.128 Consequences For Breach 31

2.130 Insurance 31

2.131 Liability Insurance 31

2.132 Subcontractor Insurance Coverage 32

2.133 Certificates of Insurance and Other Requirements 32

2.140 Indemnification 33

2.141 General Indemnification 33

2.142 Code Indemnification 33

Deleted – Not Applicable 33

2.143 Employee Indemnification 33

Deleted – Not Applicable 33

2.144 Patent/Copyright Infringement Indemnification 33

Deleted – Not Applicable 33

2.145 Continuation of Indemnification Obligations 33

Deleted – Not Applicable 33

2.146 Indemnification Procedures 33

Deleted – Not Applicable 33

2.150 Termination / Cancellation 33

2.151 Notice and Right to Cure 33

2.152 Termination for Cause 34

2.153 Termination for Convenience 34

2.154 Termination for Non-Appropriation 34

2.155 Termination for Criminal Conviction 35

2.156 Termination for Approvals Rescinded 35

2.157 Rights and Obligations upon Termination 35

2.158 Reservation of Rights 35

2.160 Termination by Contractor 35

2.161 Termination by Contractor 35

2.170 Transition Responsibilities 36

2.171 Contractor Transition Responsibilities 36

2.172 Contractor Personnel Transition 36

2.173 Contractor Information Transition 36

2.174 Contractor Software Transition 36

2.175 Transition Payments 36

2.176 State Transition Responsibilities 36

2.180 Stop Work 37

2.181 Stop Work Orders 37

2.182 Cancellation or Expiration of Stop Work Order 37

2.183 Allowance of Contractor Costs 37

2.190 Dispute Resolution 37

2.191 In General 37

2.192 Informal Dispute Resolution 37

2.193 Injunctive Relief 38

2.194 Continued Performance 38



2.200 Federal and State Contract Requirements 38

 2.201 Nondiscrimination 38

 2.202 Unfair Labor Practices 38

 2.203 Workplace Safety and Discriminatory Harassment 38

2.210 Governing Law 38

 2.211 Governing Law 38

 2.212 Compliance with Laws 39

 2.213 Jurisdiction 39

2.220 Limitation of Liability 39

 2.221 Limitation of Liability 39

2.230 Disclosure Responsibilities 39

 2.231 Disclosure of Litigation 39

 2.232 Call Center Disclosure 40

 2.233 Bankruptcy 40

2.240 Performance 40

 2.241 Time of Performance 40

 2.243 Liquidated Damages 41

 2.244 Excusable Failure 41

2.250 Approval of Deliverables 42

 2.251 Delivery Responsibilities 42

 2.252 Delivery of Deliverables 42

 2.253 Testing 42

 2.254 Approval of Deliverables, In General 43

 2.255 Process for Approval of Written Deliverables 43

 2.256 Process for Approval of Services 44

 2.257 Process for Approval of Physical Deliverables 44

 2.258 Final Acceptance 44

2.260 Ownership 44

 2.261 Ownership of Work Product by State 44

 2.262 Vesting of Rights 44

 2.263 Rights in Data 45

 2.264 Ownership of Materials 45

2.270 State Standards 45

 2.271 Existing Technology Standards 45

 2.272 Acceptable Use Policy 45

2.280 Extended Purchasing 45

 2.281 Mi-DEAL 45

2.290 Environmental Provision 45

**DEFINITIONS**

“**Days**” means calendar days unless otherwise specified.

“**24x7x365**” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“**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.

“**Audit Period**” has the meaning given in § 2.112.

“**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.

“**Blanket Purchase Order**” is an alternate term for Contract and is used in the States computer system.

“**Business Critical**” means any function identified in any Statement of Work as Business Critical.

“**Chronic Failure**” is defined in any applicable Service Level Agreements.

“**Deleted – Not Applicable**” means that § is not applicable or included in this Contract.

“**Deliverable**” means physical goods and/or commodities as required or identified by a Statement of Work

“**DMB**” means the Michigan Department of Management and Budget

“**Environmentally preferable products**” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“**Excusable Failure**” has the meaning given in § 2.244.

“**Hazardous material**” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“**Incident**” means any interruption in Services.

“**ITB**” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders

“**Key Personnel**” means any Personnel designated in § 1.031 as Key Personnel.

“**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.

“**Ozone-depleting substance**” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“**Post-Consumer Waste**” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“**Post-Industrial Waste**” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.



“Recycling” means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company to which 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.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This document is a Contract agreement between the State of Michigan and Central Michigan University to provide a law enforcement personnel resource study and projection model, which examines the law enforcement needs for each of the Michigan Department of State Police (MSP's) seven (7) districts that includes each of the 64 individual police posts.

Pursuant to **Michigan Public Act 249 of 2008, § 233**, the timely completion of this law enforcement resource study “**must be produced by contract with an accredited in-state university.**”

1.012 Background

In 1994, the Michigan Department of State Police (MSP) adopted a patrol allocation model (PAM). The PAM is a mathematical formula that allowed the MSP to identify its personnel needs to the Governor and executive branch of State government, as well as the legislature, in order to most effectively protect and serve the citizens of this state. PAM is no longer considered a valid model for determining personnel needs, as the formula is outdated due to changes in crime trends, population demographics, and changes to other local law enforcement resources. Therefore, the MSP now needs to develop and implement a new formula by which it can project its personnel resource allocation needs on an annual basis.

This Contract will provide a critical study and formula, based on objective and statistical criteria, through which the MSP can determine an allocation of its Bureau of Field Services personnel resources for each State fiscal year (FY), and thereby continue to protect the safety and welfare of the citizens and visitors of Michigan on an emergency and as needed basis.

1.020 Scope of Work and Deliverables

1.021 Scope

Contractor shall complete a study based on objective statistical data for the MSP that includes development of a personnel resource allocation model or formula. The study shall provide analysis of and recommendations concerning:

- MSP patrol and response **needs** within each district and each individual post area for this state;
- Baseline / minimum personnel assignment **recommendations** for the level of personnel resources needed to perform separate law enforcement functions; and,
- **Analysis** concerning what personnel is required to achieve the recommendations.

(A) The study shall examine and analyze, at a minimum but not limited to, *statewide*:

- Crime statistics, including reported crimes for juvenile delinquency and clearance rates;
- Demographics, including:
 - Geography;
 - Infrastructure (to include traffic patterns, etc.);
 - Population (raw, median household, etc.);
 - Businesses;
 - Government (e.g., prisons, etc.);

and, a

- Detailed inventory of all existing law enforcement resources, at all levels, for each of the seven (7) MSP district areas, including hours (full and part time) personnel assignments, including but not limited to:



- Patrol / field operations
- Detectives / Investigators / Sergeants
- Specialists, including:
 - Canine Officers
 - Community Liaisons / School Liaisons
 - Court Officers
 - Dispatch Officers
 - Emergency Support Staff / Teams (e.g., SWAT Teams, etc.)
 - Divers
 - Jail Officers
 - Trainers
 - Other enforcement personnel whose primary duties do not include responding to calls for service, patrolling the roadways, or investigating reported crimes.

- Pursuant to § 2.002, *Renewal*, if a renewal option(s) is/are exercised for this contract, it shall include training to State staff on the use of the model-formula and technical assistance for implementation.

(B) The following is considered **out of scope** for the study to be produced under this contract:

- Victim surveys;
- Conviction / Incarceration data;
- Law enforcement role definition;
- Position descriptions;
- MSP organizational analysis.

1.022 Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

(A) Work includes:

Creation of a resource needs assessment providing a formula, based on objective statistical data, that can project an allocation for MSP personnel resources needed to provide general law enforcement services to the citizens of this state 24 hours a day, 7 days a week, 365 days a year, in every county of the state.

The personnel resource assessment model (RAM) shall include a formula that can be populated with data to result in a projection of the minimum number of personnel needed to effectively provide appropriate response for:

- (1) Responding to calls / contacts for law enforcement service;
- (2) Investigating crimes reported by both uniform personnel and post detectives; and,
- (3) Providing an average of no less than three (3) hours per work shift per uniform trooper dedicated to patrol operations (i.e., time not spent investigating incidents).



- (B) Deliverables include:
- (1) Bi-monthly progress meetings with the CCI or Contract Manager;
 - (2) No less than three (3) meetings with the CCI throughout the term of the study.
 - (3) A full and concise written report, addressing all of elements of the study and including a formula (based on objective and statistical data) that can be populated annually by MSP to project its personnel resource needs for the defined law enforcement functions.
 - (4) Summary audio/visual presentations of the final report to be given to the Michigan State Police Executive Council and to the Michigan State Police Executive Management Forum. (These presentations will be made in the Lansing, Michigan area and may require **two** separate meeting times/dates).
 - (5) Final *Resource Allocation Model Study and Report* compiled into State Executive Branch Report to Legislature format.
 - (6) As directed by the CCI, summary audio/visual presentations of the report to be given before the Legislature, specifically the State Police and Military and Veterans Affairs Subcommittees of the Appropriations Committee for both the House and Senate. (These presentations may also require **two** separate meeting times/dates.)

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Pursuant to § 2.060, *Contract Management*, Contractor shall provide sufficient staffing resources for completion of the tasks and services as defined in this agreement. As part of its annual project/work-plan, Contractor shall also provide a detailed description of its key staff, additional staff, and any consultants or subcontractors as related to this project, for final review and approval by the respective, assigned State Contract Compliance Inspector (CCI), as follows:

(A) Key Staff

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, and Contractor shall identify and submit to the State for approval through its annual Work-Plan / Project Management process. Contractor must not remove any State approved Key Personnel from their assigned roles or the Contract without the prior written consent of the State, pursuant to §2.063, *Contractor Key Personnel*.

Contractor shall provide not less than the following key staff to complete this project:

(1) Research Director:

(a) This role must be filled by the Contractor's representative who shall serve as the lead or primary contact for the State's Contract Compliance Inspector (CCI) and Contract Manager, and it shall be responsible for:

- Approval and issuance of Contractor's invoice;
- Contractor's staff assignment (for other key, additional, and subcontractor staff),
- Lead facilitator for interviews (e.g., communications with other law enforcement personnel, etc.);
- Final responsibility to submit reports to the State;
- Give and issue final presentation to State.

(b) Pursuant to § 2.061, *Personnel Qualifications*, minimum ability, expertise, and knowledge shall include thorough familiarity with a majority of:



- Research methodologies and techniques.
- Statistical theory and techniques.
- Principles of planning, organizing, and conducting research projects.
- Planning, assigning, and coordinating research projects.
- Sources of literature, research institutions, associations, and current law and policy developments in respective area of research for this project.
- **Policies and procedures relevant to this research area, based on information of a conceptual as well as objective nature from varied and complex sources.**
- Utilizing crime, economic, population, geographic land use, and traffic, data and projections to substantiate recommendations for law enforcement planning in rural, regional, recreational, and urban areas.
- Analyzing and evaluating survey and research data to make specific recommendations concerning the development of a model formula.
- Computer programming, data modeling, and object-oriented programming procedures and techniques.
- Software application development environments and related tools.
- Applying results of research projects and reporting techniques.
- Effective methods of presenting scientific data and reports to nonscientific audiences.
- Meeting with government officials and other partners, stakeholders, and the public to describe research and study techniques.
- Maintaining favorable public relations.

(c) Minimum education shall include not less than:

- Possession of a doctoral degree in criminal justice, criminology, industrial or organizational psychology, political science, public administration, resource management, sociology, urban planning, social work, or other such related field, with a research emphasis that includes experimental design and quantitative and qualitative research methodologies.

(2) Assistant Research Director:

- (a) This role is considered a direct and an integral compliment to the roles, responsibilities, and abilities of the Research Director, and it must be filled by the Contractor's representative who shall serve as the secondary contact for the State's CCI and Contract Manager, and it shall be responsible for:
- Back-up to the Research Director, with at least some knowledge and familiarity with a majority of the expertise required in (1)(b) above (and thorough knowledge and expertise that is complimentary to the Research Director's);
 - Secondarily assistance during interviews and meetings;
 - Report and survey drafting, etc.;
 - Completing some interviews or presentations, etc., as assigned by the Research Director.
 - Other responsibilities as directed by the Research Director or State CCI.

(b) Pursuant to § 2.061, *Personnel Qualifications*, minimum education and experience shall include not less than:



- Thesis-based master's degree in criminal justice, criminology, industrial or organizational psychology, political science, public administration, resource management, sociology, urban planning, social work, or other such related field, with a research emphasis that includes experimental design and quantitative and qualitative research methodologies.

(3) Other Key Staff (recommended by Contractor, for approval by CCI)

(B) Additional Staff (non-key)

Additional staff assignments are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor's key-staff. These roles may include graduate assistants, research assistants, information technology system technicians, engineers or technicians who can draft diagrams and schematics, security specialists, accounting, administrative support, etc. Contractor shall include a detailed description of these additional roles in its project / work plan to be approved by the State's CCI, and explain how these integrally supportive roles will work with the key-staff positions.

(C) Sub-Contractors

Pursuant to § 2.070, *Subcontracting*, Sub-Contractor roles are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor's key-staff. Delegation of any portion of the services is subject to written, pre-approval by the State, and Contractor shall include a detailed description of these roles and responsibilities in its project / work plan to be approved by the State's CCI, and explain how these integrally supportive roles will work with the key-staff positions.

1.032 State Staff, Roles, and Responsibilities

(A) Contract Compliance Inspector

The Contract Compliance Inspector (CCI) is the officially designated MSP representative who will oversee and have final authority to accept or reject work performed this Contract. Specifically, the CCI is empowered to:

- (1) Receive, evaluate, and approve any recommendations or work submitted by the Contractor to the State and / or its program partner(s).
- (2) Meet with the Contractor prior to the start of any work to discuss and finalize the Contractor's project work plan.
- (3) Issue final approval of the Contractor's work plan.
- (4) Direct and require the reassignment of Contractor's personnel or Subcontractors, pursuant to Article-2, § 2.063, *Reassignment of Personnel*.
- (5) Receive and issue final approval for all required reports from the Contractor.
- (6) Review and approve (via signature) invoices for work performed under the provisions of this contract.
- (7) Issue final acceptance and approval that all Contractor's work has been completed to the State's satisfaction.

(B) Contract Manager / State Project Manager

Per § 2.023, the Project Manager or Contract Manager (CM) is the officially designated MSP representative who will operationally manage this Contract. Specifically, the Contract Manager is empowered to:

- (1) Have day-to-day oversight of this contract.
- (2) Recommend to CCI whether all Contractor's work has been completed to the State's satisfaction.



- (3) Receive, evaluate, and recommend approval or denial for any work (e.g., status or summary reports, invoices, etc.) submitted by the Contractor to the State and / or its program partner(s).
- (4) Meet with the Contractor prior to the start of any work to discuss and finalize the Contractor's project work plan.

1.033 Other Staff, Roles, and / or Responsibilities

Contractor will be responsible to work and interact with the following groups and / or organizations, in order to obtain the information and statistical data necessary to complete the study, make recommendations, and analysis of recommendations; this list is not all inclusive:

- United States Census Bureau
- Federal Bureau of Investigation
- National Institute of Justice
- Michigan State Police Executive Division Staff
- Michigan State Police Field Services Bureau Staff
- Other State of Michigan Agencies and Departments, such as:
 - Michigan Department of Transportation
 - Michigan Department of Corrections, et al
- Local villages, townships, cities, and county governments
- Local villages, townships, cities, and county law enforcement agencies

1.040 Project Plan

1.041 Project Plan Management

(A) Contractor will carry out this project under the direction and control of the MSP.

(B) There must be continuous liaising with the Contractor during this contract and particularly during any process involving MSP staff, partners, other government officials, or project stakeholders. The MSP will meet with the Contractor's Research Director for initial review of the Contractor's work plan prior to beginning service delivery and then periodically, as needed. The meetings will provide for reviewing progress and necessary guidance to the Contractor regarding the sequence and timing of activities, and for solving issues or problems in completion of the study.

(C) The annual project management plan (also referred to as the *annual work-plan*) and the corresponding timeline or calendar must include project milestones and anticipated outcomes for each of the duties or responsibilities associated with data gathering, analysis, and final completion of the study and model formula.

(D) The plan must describe, in detail, any identifying methods, tools, and processes, intended for the oversight and completion of this project; this plan should also address any issues/changes as they may arise, and how those issues will be conveyed to the appropriate state staff, and include suggested resolution to the anticipated issue(s).

(E) Contractor will identify and explain any deviations from the required reporting schedule. Contractor will respond to inquiries from the department submitted to the State through its assigned Research Director within no less than five (5) business days.

(F) At minimum, the following milestones and timeframe(s) will be accomplished and **completed** by Contractor, unless otherwise approved by the State:

- (1) 12/15/08 – Analysis and Summary of current MSP resources
- (2) 01/31/09 – Analysis and Summary of demographics (i.e., all *non-law enforcement personnel* information needed for the study, e.g., crime statistics and analyses, population, etc.)



- (3) 0 3/31/09 – Analysis and Summary of other existing local law enforcement resources
- (4) 05/29/09 – **Draft Personnel Resource Allocation Model Study and Report** to Contract Manager (without formula)
- (5) 6/30/09 – Formula *draft* (with instructions) to Contract Manager and CCI
- (6) 08/15/09 – Draft of Final *Resource Allocation Model Study and Report* to Contract Manager and CCI
- *** 10/31/09 – MSP submits State approved *Resource Allocation Model Study and Report* to the Legislature
- (7) From 10/31/09 to 12/31/09 – Research Director and Assistant are available for testimony and presentations to the Legislature and other State staff, as directed by CCI, etc.

1.042 Reports

Contractor will report to the department no less than the first business day of the month on a bi-monthly basis regarding the progress of the project. Contractor will have a **final study and functioning model formula** (with any changes, additions, edits, or redactions) **completed for submission to the CCI and Contract Manager by no later than September 15, 2009:**

Contractor shall provide the following reports as directed by the CCI:

- (A) Annual Project / Work Plan
- (B) Bi-Monthly Status Report (i.e., one report every two months), including no less than:
 - (1) Synopsis of the study's progress / status
 - (2) Status of deliverables for the current and prior month
 - (3) Which deliverables were missed (if any) and why
 - (4) What deliverables are due the in next two months
- (C) Analysis and Summary of current MSP resources
- (D) Analysis and Summary of demographics (i.e., all *non-law enforcement personnel* information needed for the study, which does include all crime statistics and analyses, population, etc.)
- (E) Analysis and Summary of existing local law enforcement resources
- (F) **Draft Personnel Resource Allocation Model Study and Report** to Contract Manager (without formula)
- (G) **Formula draft** (with instructions) to Contract Manager and CCI
- (H) Draft of Final *Resource Allocation Model Study and Report* with presentation to State Staff
- (I) Final *Resource Allocation Model Study and Report* with *Formula* (including issues and risks to Contractor's recommendations and any needed edits as determined by State Staff)
- (J) Invoice for Deliverable(s)

**1.050 Acceptance****1.051 Criteria**

The following quantitative and qualitative criteria will be used by the State to determine *Acceptance* and *Evaluation* of the services and/or deliverables provided under this SOW:

(A) Performance Criteria:

- Completion of deliverables as directed;
- Completion of meetings and reports as directed;
- Adherence to project / work plan calendar (i.e., milestone completion);
- Demonstration of expertise regarding law enforcement allocation methods.

(B) Effectiveness Criteria:

- Viability and objectivity of MSP personnel recommendation(s) from final study;
- Cohesiveness and clarity in presentations, interviews, and all communications with US governmental staff, State Executive branch staff, State Legislative branch staff, MSP partners, stakeholders, other law enforcement providers, contractors, and the general public, etc. (i.e., communications are consistently audience appropriate);
- Formula functionality and viability (i.e., whether it easily allows input of data with the result of obtaining a recommendation for personnel needs in any MSP district or post area of the state, with currently existing data/statistics or other data as those variables change in the future and need updating).

1.052 Final Acceptance

Acceptance of deliverables is defined as State approval of Contractor invoices.

1.060 Proposal Pricing**1.061 Proposal Pricing****A. Authorized Value**

This is a fixed-price contract, with an authorized value of 192,000.00.

B. Invoice Process

- Contractor shall maintain a record system that documents the service(s) and deliverable item(s), as defined in this Contract, and delivered during the term of this Contract; these records shall also document the specific expenses billed to the State under the Contract.
- An "invoice" shall accurately represent the service(s) or item(s) delivered, the cost by item type, and the total amount being claimed, and must be submitted to the State, within 30-days from the end of the billing cycle or period as approved by the MSP's CCI.
- State will not reimburse Contractor more than it reimburses State-employees for applicable travel expenses, pursuant to the State of Michigan's Administrative Guide to State Government POLICY 0420: *Travel* (Issued January 1, 1994), and the Michigan Constitution, Article XI, §5 and *The Management and Budget Act*, Public Act 431 of 1984, as amended, §217; current approved rates may be obtained from http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html
- For the month of September, any billings or invoices shall be submitted as directed by the respective Department's assigned CCI, Buyer, or Contract Administrator, to meet fiscal year-end closing due dates and any other requirements.
- If a billing is not received as set forth above, no payment shall be made by the State for that billing period unless an exception is specifically authorized by the respective Department director or her/his delegated representative.



- In no event, shall the State make payment to the Contractor for billings submitted more than 90-days after the end of the scheduled billing period described above, without approval from the respective State Department Director or his/her delegated representative.

C. Reimbursement and Payment Method

Contractor invoicing and State-payment will be made as a **percentage** (of total quotation) **per deliverable**, and Contractor shall invoice the State according to the following schedule:

	DELIVERABLE DESCRIPTION	DATE DUE TO STATE CCI AND CM	PERCENTAGE OF QUOTATION	TOTAL
01)	Analysis and Summary of current MSP resources	12/15/2008	10%	\$19,200.00
02)	Analysis and Summary of demographics (i.e., all <i>non-law enforcement personnel</i> information needed for the study, e.g., crime statistics and analyses, population, etc.)	01/31/2009	10%	\$19,200.00
03)	Analysis and Summary of other existing local law enforcement resources	03/31/2009	10%	\$19,200.00
04)	Draft <i>Personnel Resource Allocation Model Study and Report</i> (without formula)	05/29/2009	25%	\$48,000.00
05)	Formula <i>draft</i> (with instructions) to Contract Manager and CCI	06/30/2009	25%	\$48,000.00
06)	Final <i>Resource Allocation Model Study and Report</i>	08/15/2009	10%	\$19,200.00
07)	Presentations and/or testimony by Research Director and Assistant to the Legislature and other State staff, as directed by CCI, etc. (from 10/31/09 to 12/31/09); note: if no presentation outside MSP is required, then final 10% will be paid upon that determination, and by no later than 01/31/2010.	10/31/2009 to 12/31/2009	10%	\$19,200.00
Total Quotation:			100%	\$192,000.00

1.062 Price Term

Correct invoices, pursuant to §1.061 (C) above, will be due and payable by the State within 30-days after the State's approval of the invoice for delivery of goods and/or services (whichever is later), in accordance with the State's standard payment procedure.

1.063 Tax Excluded from Price

DELETED: Not applicable.

1.064 Holdback

DELETED: Not applicable.

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract.

DELETED: Not applicable.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of approximately one (1) year beginning November 6, 2008, through December 31, 2009. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in § 2.150) of the Contract, unless otherwise extended under 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.

2.002 Renewal(s)

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

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

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.

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work.

2.006 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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by § 2.005.

(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 the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 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.

2.008 Form, Function & Utility

DELETED: Not applicable.

**2.009 Reformation and Severability**

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

2.010 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, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, 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.

2.020 Contract Administration**2.021 Issuing Office**

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

Malynda Little, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: littlem3@michigan.gov
Phone: (517) 373-8622

2.022 Contract Compliance Inspector (CCI)

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with the Department of State Police (MSP), will direct the person named below, or any other person so designated, 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 the Contract as that authority is retained by DMB Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Lieutenant Colonel Eddie Washington, Field Services Bureau Commander
Michigan State Police
714 S. Harrison Road
East Lansing, MI 48823
E-mail: WashinE@Michigan.gov
Phone: (517) 336-6163

**2.023 Project Manager**

The following individual will oversee the project for the State:

Captain Jack Shepherd, Executive Division Commander

Michigan State Police
714 S. Harrison Road
East Lansing, MI 48812
Email: shepherj@michigan.gov
Phone: (517) 336-6172

2.024 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 Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

(A) By giving Contractor written notice within a reasonable time, the State must 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 must 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").

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

(C) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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 §; (iii) the third 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:

Malynda Little, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: littlem3@michigan.gov
Phone: (517) 373-8622



~~-and-~~

Lieutenant Colonel Eddie Washington, Field Services Bureau Commander

Michigan State Police
714 S. Harrison Road
East Lansing, MI 48823
E-mail: WashinE@Michigan.gov
Phone: (517) 336-6163

Contractor:

Janine E. Janosky, Vice Provost for Research

Central Michigan University
Foust 251
Mount Pleasant, Michigan 48859
Email: janos1je@cmich.edu
Phone: (989) 774-6777

Either party may change its address where notices are to be sent by giving notice according to this section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant, or any Subcontractors, of either the State or the Contractor, may 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.

2.028 Covenant of Good Faith

Each party must 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.

2.029 Assignments

(A) Neither party may assign the Contract, or 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 the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the 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. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(C) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.



2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

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

2.033 Permits

Contractor must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not 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 the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 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 competitive advantage on the RFP.

2.036 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").

2.037 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 man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order 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. 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.

2.042 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.

2.043 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.



2.044 Invoicing and Payment – In General

(A) 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.

(B) 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. 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 **§ 1.064**.

(C) 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 45 days after receipt, provided the State determines that the invoice was properly rendered.

(D) Contract Payment Schedule

(1) Contractor request for performance-based payment

The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.

(2) Approval and payment of requests

a) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.

b) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **§ 1.061** of this Contract.

c) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the State and does not excuse the Contractor from performance of obligations under this Contract.

2.045 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.

2.046 Antitrust Assignment

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.

**2.047 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.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at www.cpexpress.state.mi.us. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes**2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a) (2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must 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 must 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.

2.062 Contractor Key Personnel

(A) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.

(B) Key Personnel must be dedicated as defined in the Statement of Work 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.

(C) 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.



(D) **Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State.** The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel 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. Unauthorized Removals does not include replacing Key Personnel 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 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must 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 termination and cancellation rights.

(E) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must 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 incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel 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.

2.065 Contractor Identification

Contractor employees must 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.

2.066 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. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. 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 the requests for access.

2.067 Contractor Return of State Equipment/Resources

Contractor must return 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.

**2.068 Contract Management Responsibilities**

Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

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.

2.072 State Consent to Delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, 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 SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

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.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **§s 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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

2.080 State Responsibilities**2.081 Equipment**

State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

**2.082 Facilities**

State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the 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 the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security**2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. 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. The 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/dit>. Furthermore, Contractor personnel must 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 comply with all Physical Security procedures in place within the State facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this §, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must 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 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements

Deleted – Not Applicable

2.100 Confidentiality**2.101 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 must 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 must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

**2.102 Protection and Destruction of Confidential Information**

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 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) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the 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 § and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of § 2.100 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 the 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 § 2.100 will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the 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 the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this § must 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.

2.105 Respective Obligations

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

2.110 Records and Inspections**2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the 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.

**2.112 Examination of Records**

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may 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. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the 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.

2.113 Retention of Records

Contractor must 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 according to generally accepted accounting principles and other procedures specified in this §. Financial and accounting records must 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.

2.114 Audit Resolution

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

2.115 Errors

(A) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must 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 invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice 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 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

Contractor represents and warrants:

(A) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must 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 the items in this Contract, Contractor must 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, must have, or must 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 must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(H) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must 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 must 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 the 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 the financial statements, reports, other information. Since the respective dates or periods covered by the 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.

(L) All written information furnished to the State by or for the 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 the information not misleading.

(M) 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 the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.

(N) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Deleted – Not Applicable.

**2.123 Warranty of Fitness for a Particular Purpose**

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

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

Deleted – Not Applicable.

2.126 Equipment to be New

Deleted – Not Applicable.

2.127 Prohibited Products

Deleted – Not Applicable.

2.128 Consequences For Breach

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

2.130 Insurance**2.131 Liability Insurance**

Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must 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 the 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.

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 under this Contract.

All insurance coverage's 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 must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

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

See www.michigan.gov/dleg.

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

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

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.

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 according to 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.

Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must 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

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this § 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 §. Subcontractor(s) must fully comply with the insurance coverage required in this §. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this § (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NUMBER 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) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 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. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must 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 must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the 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, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

As Contractor is a public, state university, established pursuant to the Michigan Constitution, each party to this contract must seek its own legal representative and bear its own costs, including judgments, in any litigation that may arise from performance of this Contract. It is specifically understood and agreed that neither party will indemnify the other party in such litigation, pursuant to the Constitution of Michigan Article IX § 18, which states in part that "the credit of the state shall not be granted to, nor in the aid of any person, association or corporation, public or private."

2.142 Code Indemnification

Deleted – Not Applicable.

2.143 Employee Indemnification

Deleted – Not Applicable.

2.144 Patent/Copyright Infringement Indemnification

Deleted – Not Applicable.

2.145 Continuation of Indemnification Obligations

Deleted – Not Applicable.

2.146 Indemnification Procedures

Deleted – Not Applicable.

2.150 Termination / Cancellation

2.151 Notice and Right to Cure

If Contractor breaches the Contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.



2.152 Termination for Cause

(A) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (1) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (2) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(B) If this Contract is terminated for cause, the Contractor must pay 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 are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(C) If 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 must 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 must cease on the effective date of the termination.

(D) If the State terminates this Contract for cause under this section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must 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 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for 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 must 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 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 unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the 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 the reduction.

(C) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this §, the State must 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. This § will not preclude Contractor from reducing or stopping Services/Deliverables 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.

**2.155 Termination for Criminal Conviction**

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 related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations upon Termination

(A) If the State terminates this Contract for any reason, the Contractor must (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) 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the 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) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not 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 may assume, at its option, any 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.

2.158 Reservation of Rights

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

2.160 Termination by Contractor**2.161 Termination by Contractor**

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under § 2.190 before it terminates the Contract.



2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or 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. If this Contract expires or terminates, 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 30 days. These efforts must include, but are not limited to, those listed in **§s 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

Contractor must 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 must 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.

2.173 Contractor Information Transition

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.

2.174 Contractor Software Transition

Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must 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 must, 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.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must 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 agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 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.



2.180 Stop Work

2.181 Stop Work Orders

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 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 must be identified as a stop work order and must indicate that it is issued under this **§ 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring 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 must either: (A) cancel the stop work order; or (B) terminate the work covered by the stop work order as provided in **§ 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must 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 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 **§ 2.024**.

2.183 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, the termination must be deemed to be a termination for convenience under **§ 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **§ 2.180**.

2.190 Dispute Resolution

2.191 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 must 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 must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's 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 claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(A) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (1) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary 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 must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (2) 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.
- (3) 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.



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

(B) This § 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 under § 2.193.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of § 2.192 is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the 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.

2.194 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 must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in § 2.150, as the case may be.

2.200 Federal and State Contract Requirements

2.201 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 under 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.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must 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 under § 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, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under § 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after 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.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must 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 must 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>.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, 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.

**2.212 Compliance with Laws**

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

2.213 Jurisdiction

Any dispute arising from the Contract must 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 the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the 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.

2.220 Limitation of Liability**2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does 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.

2.230 Disclosure Responsibilities**2.231 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, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (1) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (2) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this §.

(B) Assurances. If any Proceeding disclosed to the State under this §, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(1) The ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or

(2) Whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.



(C) Contractor must make the following notifications in writing:

(1) Within 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 must notify DMB Purchasing Operations.

(2) Contractor must also notify DMB Purchasing Operations within 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 must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

DELETED: Not applicable.

2.233 Bankruptcy

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 the Works in Process by whatever appropriate method the State may deem expedient if:

(A) Contractor files for protection under the bankruptcy laws;

(B) An involuntary petition is filed against the Contractor and not removed within 30 days;

(C) Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(D) Contractor makes a general assignment for the benefit of creditors; or,

(E) Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

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 must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(A) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to 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 **§ 2.241(a)**, Contractor must 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 must inform the State of the projected actual delivery date.

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



2.242 Service Level Agreements (SLAs)

(A) SLAs will be completed with the following operational considerations:

(1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.

(2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.

(3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

(a) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.

(b) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(B) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

(C) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(D) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

Deleted: Not Applicable.

2.244 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 the 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.



If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 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 is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will 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 the Contractor, except to the extent that the State must 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.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

(A) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must 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 must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

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 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

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 must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

(A) Before 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 conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the 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 must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the 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 is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

(A) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in § 2.253, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection 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) Before 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 according to § 2.253.

(D) The State will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is 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 opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the 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 the breach. Notwithstanding the foregoing, the State cannot 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 the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process for Approval of Written Deliverables

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 (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 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 before 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 before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 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.

2.256 Process for Approval of Services

State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The 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.

2.257 Process for Approval of Physical Deliverables

State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the 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.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in §§ 2.251-2.257. 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.

2.260 Ownership

2.261 Ownership of Work Product by State

State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, 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 the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.263 Rights in Data**

(A) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The 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 the Contractor. No employees of the 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 §, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(B) The State is the owner of all State-specific data under 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 §, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 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.

2.270 State Standards**2.271 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>, unless an exception to any of these standards is granted by the CCI and the Department of Information Technology (DIT), as may respectively be required by the State; approval and acceptance of the exception shall remain the sole discretion of the State.

2.272 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>. 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.

2.273 Systems Changes

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

2.280 Extended Purchasing**2.281 Mi-DEAL**

DELETED: Not applicable.

2.282 State Employee Purchases

DELETED: Not applicable.

2.290 Environmental Provision

DELETED: Not applicable.