

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

January 8, 2009

**NOTICE
 TO
 CONTRACT NO. 071B9200107
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR The CSC Group of Michigan 3425 Belle Chase Way Lansing, MI 48911 bscafuro@csc-groupinfo.com	TELEPHONE (800) 646-4272 Betty Scafuro
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Jeff Baldwin (517) 335-8965 COM and COLD Production for Enterprise Reporting – Dept. of History, Arts and Libraries	
CONTRACT PERIOD: From: December 15, 2008 To: December 14, 2011	
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>	

The terms and conditions of this Contract are those of RFP #07118200182, this Contract Agreement and the vendor's quote. 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.

Current Authorized Spend Limit: \$1,216,532.70

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THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #071I8200182 Orders for delivery may be issued directly by the Department of History, Arts and Libraries through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

The CSC Group of Michigan

 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

FOR THE STATE:

 Signature
Melissa Castro, CPPB, Buyer Manager

 Name/Title
Services Division, Purchasing Operations

 Division

 Date



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

Contract No. 071B9200107
COM and COLD Production for Enterprise Reporting

Buyer Name: Jim Wilson
Telephone Number: 517-241-1916
E-Mail Address: wilsonj4@michigan.gov



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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The objective of this Contract is to provide for the production of enterprise reporting products in both micrographic (COM) and digital (COLD) formats and the Storage, Retrieval, Inspection & Restoration of Microfilm & Magnetic Media for the State of Michigan consistent with the requirements outlined in the “Work and Deliverable” section of this contract.

1.002 BACKGROUND

The Department of History, Arts and Libraries (HAL), Records Management Services (RMS) is responsible for managing the creation, maintenance, preservation and disposition of the records of all state departments and agencies. RMS is also responsible for assisting local governments with their records management needs.

All state agencies and local governments that utilize these services will do so under the direction and control of the Department of History, Arts and Libraries, Records Management Services Division. Request for media storage or enterprise reporting of state records originate within the individual offices of the various state departments and agencies. To assure that all administrative, fiscal, legal and historical needs of state government are provided for efficiently and cost-effectively, all requests are submitted to HAL, Records Management Services for approval. No work is to be done by the Contractor without this approval. Local government agencies that choose to utilize this contract will do so under the same terms and conditions as state agencies.

Many state agencies and local governments rely upon another source to provide these services. Providing for the needs of state agencies on a centralized basis involves a full range of information management services, including but not limited to the operation of microfilm/fiche cameras, microfiche COM production machines, microfiche/film processors, microfiche/film duplicators, CD-R/DVD drives and other various digital media recording/reading devices. Turn around time for job production ranges from same day to several weeks, depending upon the individual job requirements.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The Contractor will not be constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary to permit the economically feasible development of alternative approaches, or the application of proprietary analytical techniques or production methods.

Scope - Media Storage/Inspection Related:

The following applies to all microfilm/fiche/computer media storage, retrieval, inspection & restoration of microfilm.

1. Provide safe, secure storage for various micrographic and electronic media formats by the roll/sheet/cartridge/disc, box or carton in a “Vault” type environment.
2. Retrieve items stored by agencies and perform internal electronic tracking within the Contractor’s facility.
3. Placing new or previously retrieved items into new or existing containers depending on instruction given.
4. Label all media appropriately with agency identification and content identification.
5. Assist the customer in developing a statement of work for new applications as needed.
6. Advise the customer and Records Management Services regarding options for long-term media preservation and storage solutions.
7. Silver and diazo duplication of 16mm roll, 16mm jacket, 35mm roll, 35mm aperture card, and 105 microfiche.
8. Inspection of existing microfilm/fiche in accordance with ANSI/AIIM MS45-1990, *Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration*.
9. Provide results of inspections in a format approved by Records Management Services.
10. Splicing, repair and restoration of various microforms.
11. Replacement of containers/reels or cartridges.
12. Provide pickup and delivery services.

**Scope - Enterprise Reporting Related:**

The following applies to both digital (COLD) and micrographic (COM) formats used in the creation of enterprise reports.

1. The Contractor will produce 4"x 6" silver halide Computer Output Microfiche (COM) and/or Computer Output Laser Disk (COLD) from various magnetic media while meeting or exceeding the State of Michigan Standards.
2. The Contractor will be required to interact with the individual departments and agencies to maintain the level of customer service currently being provided. The Contractor will review each application with the individual departments and agencies on a periodic basis to be sure the delivered products are formatted according to the user specifications and all distribution requirements are being satisfied.
3. The Contractor will be required to interact with the designated system analysts of each application to affect application changes and new application set-ups.
4. The Contractor will be responsible for proofreading the original and duplicate formats produced to be sure all images are readable and of acceptable quality.
5. The Contractor will produce duplicate microfiche onto diazo film. The duplicate 105 microfiche will have a white stripe to highlight the microfiche title. All 105 microfiche jobs must be collated and distributed in sets. The Contractor must have capability to make duplicates of a duplicate microfiche using non-stripe diazo.
6. Perform custom programming functions related to delivering the product.
7. Label all media returned with agency identification and content identification.
8. Assist the customer in developing a statement of work.
9. Advise the customer and Records Management Services regarding the best method for obtaining the most favorable, cost effective product.
10. Applications may be required to be provided in an electronic format utilizing Captaris/Alchemy file formats or other COLD type application as requested by the agency. Delivery may be required to be in form of a complete database or as an upload utility.
11. Provide pickup and delivery services.

1.102 OUT OF SCOPE

Capture Services associated with source documentation is out of scope for this project.

1.103 ENVIRONMENT - Reserved**1.104 WORK AND DELIVERABLE**

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

An overall plan must be developed as a basis for executing subsequent steps as each project progresses. Essential to the process of this is the preparation of a sound approach to attaining the objectives of each project. It is the responsibility of the Contractor to advise the customer and the Records Management Services staff regarding the best method for obtaining the most favorable product. The Contractor shall assist the customer in identifying techniques that can be deployed to reduce total cost associated with these tasks.

Media Storage And/Or Inspection

The agency, Contractor and contract administrator must agree and sign a Statement of Work (SOW) for each job/application prior to any production being performed for local government agencies utilizing this contract (State agency microfilm is managed through the Versatile Software System maintained by Records Management Services). It is the responsibility of the Contractor to develop the statement of work. The statement of work shall contain all information necessary to identify all billable tasks and other information necessary to obtain the desired output. The statement of work shall include but may not be limited to the following:

- Agency customer information (including billing/budget codes)
- Contact information
- Purpose of the project
- Scope and objective of the project
- Pickup and delivery schedule
- Quality control specifications
- Quantitative cost estimate and line item detail
- Any other information deemed relevant to the project



A copy of the final signed and approved statement of work shall be filed with the Records Management Services. Any changes to the work statement after production begins shall be agreed upon in writing and filed with the statement of work. Changes to the Statement of Work that have a quality or financial impact require signatures from all parties.

COM/COLD

The agency, Contractor and contract administrator must agree and sign a Statement of Work (SOW) for applications prior to any production being performed. It is the responsibility of the Contractor to develop the statement of work. The statement of work shall contain all information necessary to identify all billable tasks and other information necessary to obtain the desired output. The statement of work shall include but may not be limited to the following:

- Agency customer information (including billing/budget codes)
- Contact information
- Purpose of the project
- Scope and objective of the project
- Pickup and delivery schedule
- Sample for test methods and results (including quality attributes)
- Header specifications (for microfiche applications)
- Indexing specifications (for COLD applications)
- Product finishing and labeling specifications
- Quality control specifications
- Quantitative cost estimate and line item detail
- Any other information deemed relevant to the project

A copy of the final signed and approved statement of work shall be filed with the Records Management Services. Any changes to the work statement after production begins shall be agreed upon in writing and filed with the statement of work. Changes in the production process that have a quality or financial impact require signatures from all parties.

Work Submission Process

The work submission process will be in constant development with a primary emphasis given on the requirements noted in this contract.

The Contractor will dedicate the required resources (staff and equipment) to satisfy the need of the individual applications and the requesting agencies. This includes current applications as well as future applications. The Contractor will remain flexible to be sure all applications are completed in a timely manner and will communicate with all responsible parties whenever the need arises.

To establish a specific work plan by application would be difficult so generalities must be assumed for the majority of applications except where noted in the contract. If specific requirements are noted for certain applications these requirement will be fulfilled and satisfied.

Typically the Contractor will pick up from the State of Michigan Record Center any magnetic media that contains data to be converted to digital and micrographic formats and/or media to be stored. At the same time any previously created microfiche, magnetic media and or storage media will be delivered to the Records Center and placed in the appropriate areas for delivery through the state ID Mail.

There may be unique and specific delivery instructions issued by a local state agency that may change the above process, which the Contractor will adapt to.

Currently the Contractor will coordinate its efforts through the Records Center. Eventually there will be a one to one contact with the individual state agencies.

All digital and micrographic formats will be tested, samples created, samples delivered and approved by the agency before production begins.

The Contractor will secure from the agency the storage, duplication and distribution instructions necessary to satisfy the needs of the requesting agency.



The Contractor will package the completed microfiche and microfilm into acid free envelopes or boxes. The appropriate labels will be attached. The Contractor will maintain an up to date distribution list and will coordinate this list with the state liaison or the individual agency representatives.

The Contractor will create a paper trail record to support all storage, inspection, digital and micrographic production with the date the media is received, list of application, number of original microfiche, duplicate microfiche provided, the number of frames produced, and when it was delivered. These documents will act as input to the accounting process. The Contractor will produce a monthly billing statement in an Excel spreadsheet format for each transaction as defined by the Department of History, Arts and Libraries, Records Management Services staff. The monthly invoice will be submitted electronically and will be sent to the Department of History, Arts and Libraries, Records Management Services Division. Timelines will be established for the invoice submission process after award of contract.

The Contractor will provide a LOCAL representative with experience in all facets of digital and micrographic operations to meet with all state agency representatives whenever necessary. A LOCAL programming support person will also be made available. Regularly scheduled meetings will be established.

General Requirements

All functions of this contract must be completed in the State of Michigan for the duration of the contract unless specifically authorized by the contract administrator. Authorization may be in the form of a Statement of Work for a specific project or by contract amendment.

The Contractor must have a minimum of 5 years experience in providing the desired services.

The Contractor must provide a tour of its production and storage facilities for approval by the State prior to the award of this contract.

The Contractor is responsible for building all necessary quality control mechanisms in the production process in order to insure the desired result.

Each week the Contractor shall certify through the use of a non-affiliated film testing laboratory that the processed silver negatives from all 16mm, 35mm, and 105mm processors have .014 grams S_2O_3/m^2 or less in accordance with the Michigan Standards for Capturing Microfilm from Paper and the Michigan Standards for Capturing Microfilm from Digital Images. Certification test results shall be sent to Records Management Section within five (5) calendar days of the testing. The Contractor shall maintain sufficient information to identify all rolls of film run on a particular batch so as to be able to contact the agency should a methane blue test fail.

Failure to consistently perform Methylene Blue testing, or failure to meet the required level of residual thiosulfate, or failure to provide testing results on a timely basis may result in cancellation of the contract.

Media Storage/Inspection Specific Requirements

The Contractor must have documentation of past history of consistently meeting standards for storage of microfilm as adopted by the International Standardization Organization (ISO) (ISO Standard 18911:2000) and the Association for Information and Image Management (AIIM) (MS23-1998).

The climate control of the storage vault shall be maintained with the humidity at 35% plus or minus 5% and the temperature shall not exceed 70 degrees Fahrenheit.

The Contractor will be required to begin providing a full range of storage services within 30 days after award of contract.

This contract shall be available for Local Governments to utilize.

The storage facility shall be secure from disasters such as fires, floods, riots, tornadoes, and explosives.

The rooms in which the records are to be stored must have a locking door with smoke and heat detection direct to Police and Fire departments.

The facility must have an automated alarm system to prevent un-authorized access to the facility and the records.



The storage facility will utilize a fire extinguishing system compliant with the National Fire Protection Association (NFPA)(Standard 2001 – Current Edition) on “Clean Agent Fire Extinguishing System”

Access to the facility will be restricted to authorized personnel. Adequate security procedures and systems shall be provided to prevent loss, theft, or destruction of public records to ensure safety and integrity of the records stored there.

No cellulose nitrate films shall be stored in the facility.

The storage facility will provide either two (2) distinct vaults or provide separate storage areas a minimum of 10 feet apart within a single vault to store microfilm that has been certified clean, separate from microfilm that has not been inspected. Certified clean means new polyester based camera original, new silver duplicate film or polyester based silver film that has been inspected by the Contractor or otherwise certified by the state as being “clean”.

Film stored under this contract will not be commingled with other customer’s media collections.

The records shall be available to the State five (5) days Monday through Fridays except State holidays. Emergency availability seven (7) days per week, twenty- four (24) hours per day.

The Contractor shall have the capacity to retrieve microfilm and magnetic media and deliver it to the Department of History, Arts and Libraries, Records Management Services Division within twenty-four (24) hours of request. Cost of delivery to the State Records Center shall be included in the annual cost for storage. It is anticipated that daily deliveries will be necessary.

All pickups and deliveries for the State of Michigan shall be performed by the Contractor.

The Contractor shall provide affidavits of confidentiality for all individuals that will be assigned to the performance of this contract. Any changes in staffing assigned to performance of this contract by the Contractor will be reflected in new confidentiality statements being provided. Unauthorized disclosure by the vendor will be cause for immediate cancellation of this contract.

Only individuals whose credentials have been inspected by the state to meet ANSI/AIIM MS45-1990 Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration and approved by the state will qualify to do the actual inspection of microfilm to certify clean. Any changes in staffing associated with the inspection service must undergo re-inspection of their credentials and authorized by the State.

For those records that are to be destroyed, the Contractor must confidentially destroy by granulating or other approved method. The Contractor must indicate the process that will be used for destruction. The Contractor will certify to the Department of History, Arts and Libraries, Records Management Services Division which boxes were destroyed and the method of destruction.

All services for this contract will be performed on a single site or campus and must be located within the State of Michigan.

The Contractor will have the ability to track items checked in/out.

The State will not pay any additional fees for the permanent removal of the collection other than those normally associated with labor to move and palletizing said records.

The state and local agencies using this service will be responsible for providing all boxes used to store material. Box sizes are specified under definitions, Attachment B.

The Contractor will work with the Department of History, Art and Libraries, - Records Management Services area in development of procedure manuals associated with the tasks performed by this contract.

All data associated with this contract that is collected and/or created either in paper or electronic format by the Contractor is the property of the History, Arts and Libraries – Records Management Services and shall be turned over upon termination of this contract in the manner prescribed by the agency.

Any original and diazo film produced by the Contractor will be subject to selection for testing by the Records Management Section for adherence to applicable standards and quality requirements.



Finished silver roll film will be returned to the State in plastic containers. Diazo duplications of roll film will be returned in cardboard containers. Silver duplicates shall be returned in acid free cardboard containers. Microfiche shall be packaged in acid-free envelopes. Originals and diazo copies shall not be joined together in the same envelope or wrapped together in same package.

The Contractor is expected to fill out a quality control sheet for each roll processed indicating the resolution, density, D-min and D-max of that roll. The cost for charting for film produced by the Contractor is to be included in the filming and/or processing cost.

The Contractor use a deep tank processor to process all microfilm generated for long-term preservation. The Contractor should maintain a second deep tank processor on site for backup. The Contractor must report immediately to all effected state agencies and Records Management Services, any downtime or conditions that would prevent the Contractor from providing services in the time frames specified on a statement of work.

The agency will notify the Contractor within (30) days if the microfilm product does not meet acceptable quality levels. If disapproved due to Contractor error, the Contractor will re-film or otherwise perform appropriate corrective action at no additional cost to the state.

Microfilm lab certification or over site agreement from a major microfilm manufacturer is preferred.

Enterprise Reporting Specific Requirements

The following applies to both Silver Halide Microfiche and digital formats.

The accepted input media includes 9track 1600/6260 bpi reel tapes, 3480/3490/3490E cartridge tapes, 3.5" diskette, DC600A, DC6150, DC6250, DC6525, 1gig and 2gig quarter inch cassette tape, 4MM cassette tape, 8MM cassette tape, CD-R, DVD and DVD-R. 3480/3490/3490E cartridges will be the primary input media. FTP, encrypted E-Mail and other types of data transmission capabilities may be required.

Input data may be from any system including but not limited to Honeywell Bull (ASCII or BCD), Unisys, Windows and Wang computer systems.

There will be specific requirements for certain applications that must be followed and details will be provided after the contract is awarded but these may include but not be limited to:

- **IPCLAIMS:** Tape cartridges will come throughout a week and must be accumulated to run together as one continuous job. In some cases a run may be for a week or for a month depending on the processing schedule. IPCLAIMS are produced on the Honeywell Bull Mainframe. A specific schedule will be provided and must be followed.
- **SPOOLERS:** Spoolers are tape cartridges that contain multiple files. Spoolers will be identified by the file ID OO91114M42 and OO91114M48. Some files are run together as a single application while others are run separately. Spoolers may or may not contain the same files in the same order from processing to processing. Spoolers may or may not contain files from many different departments, but all are produced on the Unisys Mainframe.
- **MULTIFILE:** Some tapes will have multiple files but the order will be consistent from run to run. Usually produced on the Honeywell Bull Mainframe. These files will be run as separate jobs; each with a unique program set up unless specifically indicated not to.
- **DMB MICROFICHE DISTRIBUTION DR-710 REPORT:** The DR-710 lists all the applications being run by the Department of Human Services and the Department of Community Health in File ID order. It then gives the distribution, number of copies, frequency, and accounting information for each individual application within the File ID. The DR-710 report is delivered to the Microfilm Lab each Thursday. The Contractor will then review it to determine any updates from the previous week. Any change in the fields mentioned above must be reported to the Contract Administrator within 24 hours.



- LABELING BULL CARTRIDGES: Cartridges are delivered with a blank label. There will be a Volumes Moved report that lists all the information for the cartridges in the shipment. The Contractor will match the cartridge number with the information on the report and write it on the cartridge label with an erasable marker. Necessary information is File ID, date, and batch number. The File ID will be cross-referenced with the DR-710 report to determine the actual applications on each cartridge.
- DEPARTMENT OF COMMUNITY HEALTH: There are three (3) applications that require special handling for the Department of Community Health. These cartridges are mailed to the Records Center and the Contractor will return the cartridges with the completed microfiche. Reports 1601801 and 1601901 will be returned by state ID Mail. Report P16341 will be delivered to a designated spot at the Records Center for pick up by Community Health.
- MQ-571 PURGE: The report MQ-571 purges six months of data twice a year. The first six months of the year will be identified by the year followed with an (example: 2001A). The last six months will be identified by the year followed with a B (example: 2001B). The Contractor will be required to enter specific information in title line 1 and 2. The information in title line 1 is the six months being purged. Title line 2 is the purge number and the six months of active data followed by -RX.

Example 1: 1998A
PURGE #41 FINAL 1998B-RX

Example 2: 1998B
PURGE #42 FINAL 1999A-RX

The Contractor will send a test fiche to the Department of Community Health contact person for approval before production can begin. The Contractor will keep a record of previous approved fiche to determine data for the next run.

- DEPARTMENT OF STATE POLICE: There are three (3) applications that require special handling for the Department of State Police. The cartridges for the 995/102, 993/308 and UCRYE-Uniform Crime report Y/E reports are mailed to the Records Center. The Contractor will return the cartridge and the CD-R utilizing MaxRetriever COLD (Acartus/EMC) self-contained software for retrieval purposes to the end user by state ID mail.
- WORKER'S COMPENSATION: Form 400/401 – received daily via FTP. The data is accumulated throughout the week and processed and returned the following Monday. The data and respective file formats utilize the MaxRetriever (Acartus/EMC) COLD retrieval software.
- FORM 114 – is received quarterly via FTP. The data is processed and returned the same day it is received. The data and respective file formats utilize the MaxRetriever (Acartus/EMC) COLD retrieval software.

The Contractor will package the original microfiche in a white acid free half envelope/sleeve, or if too large to fit, wrap in acid free paper for shipping. All copies will be packaged the same way. Completed jobs will be shipped inside an acid free envelope indicating microfiche inside. If too large to fit an envelope a shipping box sized for microfiche may be used.

Enterprise Reporting - Application Requirements:

The following applies only to 105mm Silver Halide Microfiche:

- 42X and 48X reductions for microfiche
- Negative polarity for original microfiche.
- Negative polarity for duplicate microfiche.
- Silver Halide, wet processed original microfiche.
- Diazo duplicates for microfiche.
- Must have an offsite production back up facility to assure that there will be a minimum delay in the turnaround requirements should the primary site be unavailable.
- Custom Form Overlays (approximately seven total).

**Enterprise Reporting - Distribution:**

The following applies to both digital and micrographic formats:

The Contractor will pickup the magnetic media from the Records Center or other designated Lansing or Detroit area locations on a daily basis. The Contractor will package the deliverables according to the individual instructions established by the receiving departments and agencies Statement of Work. The Contractor will maintain a distribution database and provide the proper labeling instructions for approximately one hundred fifty receiving locations. All address and copy count changes must be authorized by a designated contact for each department or the designated state contract coordinator. Each application will have specific distribution requirements. The completed microforms will be returned to the designated drop off sites at the Records Center for delivery into the State internal mail system. The Contractor will fill out and attach the proper storage release form to any original security microfiche to be stored at the Record Center. The magnetic media will be returned to the Records Center for shipment back to the data center.

Turnaround time will vary from 24 to 48 hours from the time the magnetic media or electronic transmission is received. There may be unique and special requests where immediate turnarounds may be required. Extended turnarounds for some applications may be acceptable with prior permission.

Certain applications have the original microfiche stored at the Records Center automatically when run. There must be a completed "Original Microfilm Storage Release Form" attached to each delivery. The Contractor will receive a master copy of this form that has been signed by the agency authorizing storage of their film. The Contractor will fill in the report name and run number for each application being sent on a copy of the master form. The original security microfiche and form will be delivered to the designated area at the Record Center.

Pickup And Delivery

The Contractor is required to provide its own courier service. This service shall not be contracted to a third party without written consent of the state.

Specific jobs will be picked-up and returned to the State Records Center located at 3405 N. Martin Luther King Blvd, Lansing, Michigan or directly from the agency location. Pickup direct from the agency is the preferred method. There will be no charge for pick-up and delivery from agencies within a 50-mile radius of downtown Lansing, 50-mile radius of Detroit, and a 50-mile radius of the Contractor's production facility. Pick-up and deliveries from any other location may be subject to a charge based on current (at the time of service) State of Michigan standard mileage reimbursement rate or actual third party carrier costs. Any pickup or delivery charges must be identified in the Statement of Work.

The Contractor is required to schedule daily pickup and delivery services at the State Records Center. Various agencies also require daily pickup and delivery services.

Data Transmission

A limited number of applications require the ability to transmit data via VPN, private switched circuit or encrypted e-mail attachment. The Contractor shall have the ability and technical expertise to facilitate the establishment of and management of these transmission mechanisms.

Agency Access

The Contractor will enable records in his/her possession to be retrieved by the agency. Upon request for a record to be retrieved, the Contractor will deliver the requested record(s) to the agency from which they otherwise originated by the following workday; or the Contractor will allow a designated representative of the requesting agency to come to the Contractor's facility and retrieve the record(s) within two (2) hours of being notified unless otherwise specified on the work statement. The Contractor will release the requested records only to an authorized representative of the requesting agency. The Contractor shall require positive identification, such as a driver's license, state identification or a pre-determined identification code of the person receiving the records before the records will be released. Under no circumstances is the Contractor to release any records or information to any person other than those authorized by the agency.



Security

General

Records and information are essential to the operation of state government and must be protected from vandalism, theft, unauthorized duplication, loss, damage or destruction while in the possession of the Contractor. Records and information may contain confidential information that is prohibited by statute from disclosure.

Under no circumstances, unless specifically approved in a current statement of work, shall any records or information, regardless of format, content or structure, be transferred outside the State of Michigan. Furthermore, the Contractor shall not allow any external sources, including off-shore or out of state staff, sub-contractors, or consultants, regardless of physical location or employment status, to gain access to state records, microfilm, microfiche, data, indexes, and/or other electronic information generated as a result of this contract without the specific written consent of the agency and contract administrator. The location of all storage (physical and electronic), processing, production, server room, backup facilities etc., used to fulfill this contract, shall be provided to the state prior to the contract award.

The Contractor will be held responsible for providing safe handling, confidentiality and security over all paper records, microfilm, microfiche, data, indexes, and/or other electronic information generated as a result of this contract while in the Contractor's possession or sub-contractors possession including providing periodic backups of production work. This covers the period of time from when the microfilm, microfiche or data tapes leave the state office of origin until such time as the finished product is returned back to the designated agency. This also includes the time during which the records are being held after they have been converted, until they are destroyed or returned back to the State. The Contractor will be held fully liable in the event of loss, damage, theft or destruction of records or information contained on the microfilm, microfiche or data tapes while in the Contractor's possession. Any cost incurred by the State, including the cost to recreate or recover lost, damaged or destroyed records will be the responsibility of the Contractor.

The Contractor shall maintain appropriate documentation and/or standard operating procedures in regards to all aspects of security measures outlined in this section throughout the term of this contract and shall, upon request, provide a copy of all such documents to the contract administrator.

The Contractor may be subject to a security audit as a condition of award and shall be subject to announced and unannounced security audits and site inspections after the award of this contract.

Physical security

All information will be protected from damage or exposure from the elements during storage and transit. Vehicles used for transportation of materials or final productions shall be maintained in good working condition and shall remain locked at all times while transporting state materials. Transportation vehicles shall not be used for storage purposes temporary or otherwise. At the end of a pickup or delivery, all state materials shall be maintained within the Contractor's secured building.

When information is in the possession of the Contractor, and are not in actual production, the information will be maintained in a secure room that is separate from the production area. The Contractor will permit random unannounced visits by the Department of History, Arts and Libraries, Record Management Services to monitor security measures in place.

Network/data security

To protect the confidentiality, integrity, privacy and regulatory issues of the state and the citizens for which it serves, the Contractor shall have in place the tools, practices, policies, procedures and other mechanisms to ensure a secure network environment. Specifically, the Contractor will be required to employ firewalls and other access controls, intrusion detection, anti-virus software and any other necessary controls to ensure a secure network environment. The Contractor may be required to provide a detailed description of their security measure prior to the award of this contract.

The Contractor shall monitor attacks upon their network systems and report to the contract administrator any and all attacks that appear to be deliberate attempts to access state data.

The Contractor shall maintain current patch levels on software used in association with the contract.



The Contractor shall create and maintain backup data for all production materials for no less than 30 days and no later than 60 days after delivery of the final product, unless otherwise specified in a Statement of Work. Backups shall be created and maintained in such a way as to insure that full restoration of a particular job order can be recovered for the full length of time the agency is allowed for quality inspection purposes. (30 days unless otherwise specified in a Statement of Work)

If the Contractor utilizes a third party for backup tape storage and protection, all backup tapes containing state owned data shall be stored and maintained in Michigan and shall be encrypted. Otherwise, proper physical security measures shall be employed as described in the Physical Security Section of this document.

Employee/Sub-Contractor Security

Professional background checks shall be performed on all staff, including sub-contracted staff upon hiring and/or prior to the award of this contract. The Contractor shall have on file, affidavits of confidentiality for all individuals that will be assigned to the performance of this contract. At a minimum, affidavits of confidentiality for all staff and sub-contractors shall be updated annually. The annual affidavit of confidentiality shall include a statement of certification that the employee or sub-contractor has not committed any acts since the signing of the previous affidavit that would result in the change in the results of their existing background check. Any changes in staffing assigned to performance of this contract by the Contractor will be reflected in new confidentiality statements on file.

Additional affidavits of confidentiality may be required by specific agencies for certain applications. The Contractor may also be required to limit access to information related to certain applications to specific staff members.

Unauthorized disclosure by the Contractor or sub-contractor, of any information contained in any of the records will be cause for immediate cancellation of the contract and may result in prosecution for any violation of applicable laws.

Termination

All records and information associated with this contract that is collected and/or created by the Contractor is the property of the State and shall be turned over upon termination of this contract in the manner prescribed by the state. The state shall not pay any fees for the permanent removal of state owned records and information other than those normally associated with labor to move and palletize.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The Contractor shall designate project managers to work on the project. These project managers shall be responsible for insuring a quality product is produced. Any change in project manager shall be documented in writing and filed with the Statement of Work.

This contract shall be considered a "house account". The Contractor will designate a person responsible for analyzing requested work, developing recommendations and alternatives and writing the statement of work. The individual responsible for this function shall not be compensated through volume based commissions.

The Contractor will designate a person that will be on-site at its production facility on a daily basis whom the agency project manager and contract administrator can readily contact and meet with to discuss daily provisions of the provided services.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The following person will be designated as the Contract Compliance Inspector (CCI):

Jeff Baldwin, CRM
Records Analyst
State of Michigan
HAL, Records Management Services
(517)335-8965



1.203 OTHER ROLES AND RESPONSIBILITIES

The Contractor may be required to interact with various third party Contractors and State Contractors as needed.

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

The Contractor will carry out the projects under the direction and control of the Department of History, Arts and Libraries, Records Management Services.

The Contractor may be required to submit written monthly summaries of progress which outline items such as pending SOWs, status of current jobs in production, accomplishments; problems, real or anticipated, which should be brought to the attention of Records Management Services and notification of any significant deviation from previously agreed-upon work plans.

1.302 REPORTS

In addition to the reports required in section 1.104 the Contractor will submit written monthly summaries of progress which outline items such as pending SOWs, status of current jobs in production, accomplishments; problems, real or anticipated, which should be brought to the attention of Records Management Services and notification of any significant deviation from previously agreed-upon work plans.

1.4 Project Management

1.401 ISSUE MANAGEMENT - Reserved

1.402 RISK MANAGEMENT - Reserved

1.403 CHANGE MANAGEMENT

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

1.5 Acceptance

1.501 CRITERIA

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

General Enterprise Reporting Requirements:

Unless otherwise specified by the agency, and identified in the Statement of Work, the Contractor shall inspect a minimum of 10%, by random sample, of each batch for image alignment, readability, contrast, overlapped images, data entry accuracy and any other defects in its finished product. Quality shall be guaranteed with an accuracy rate greater than 99.5% or as otherwise specified in a Statement of Work.



Failure to meet the accuracy rates specified, or quality expectations defined in the Statement of Work will result in a complete re-processing of the batch at no additional cost to the state. A batch shall be defined as a specific pickup. If a pickup is exceptionally large, for the purposed of inspection, the job shall be broken into smaller more manageable batches as defined in the statement of work.

Microfiche Specific Requirements:

Failure to maintain consistent quality fiche will be reason for cancellation of the contract. The CCI retains final authority to determine whether or not the images are acceptable and if the records need to be re-generated. The Contractor will be required to complete the corrective action within 10 business days after being notified that it is necessary, unless additional time is deemed warranted by Records Management Services. The 30-day review period will start over at the re-delivery of the corrected product.

The agency will notify the Contractor within 30 days if the microfiche product does not meet acceptable quality levels. If disapproved due to Contractor error, the Contractor will re-generate or otherwise perform appropriate corrective action at no additional cost to the state.

Digital Imaging Requirements:

The agency will notify the Contractor within 30 days if the imaging product does not meet acceptable quality levels. If disapproved due to Contractor error, the Contractor will re-generate the entire batch or otherwise perform appropriate corrective action at no additional cost to the state.

The HAL/RMS retains final authority to determine whether or not the images are acceptable and if the records need to be re-generated. The Contractor will be required to complete the corrective action within ten business days after being notified that it is necessary, unless additional time is deemed warranted by RMS. The 30-day review period will start over at the re-delivery of the corrected product.

1.502 FINAL ACCEPTANCE - Reserved

1.6 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

All prices/rates quoted in this Contract will be firm for the duration of the Contract. No price changes will be permitted. See "Attachment 2" for volume estimate sheet. All quantities listed on the price sheet are estimates only. The State does not commit to procuring any specific amount of services over the life of any contract.

The Contractor shall submit a single invoice for each service provided at the end of each month as specified by Records Management Services. **No partial job orders shall be billed without prior written approval of Records Management Services.** Invoices shall be consistent in their format/appearance and contain information specified by Records Management Services.

All supporting documentation shall accompany the submitted invoices. Supporting documentation may include but may not be limited to: copies of job orders identifying product has been received by an agency, packing slips indicating receipt of products and copies of postage receipts.

For balancing purposes, the Contractor shall submit a completed excel spreadsheet containing line item detail for each service. This spreadsheet shall be submitted electronically no later than the last business day of the month. The spreadsheet format shall be provided to the Contractor by Records Management Services at the beginning of each fiscal year.

Product descriptions contained in the invoice shall be consistent with those contained in the monthly excel spreadsheet.

Records Management Services shall be responsible for billing the agency. The Contractor is to direct all billing questions from an agency to Records Management Services



1.7 Additional Terms and Conditions Specific to this SOW

1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW

Terms And Conditions – Standards And Public Acts

The Contractor shall comply with all relevant standards and public acts that may include but not be limited to:

- State of Michigan, Standards for Capturing Digital Images from Paper or Microfilm
- State of Michigan, Standards for Capturing Microfilm from Paper
- State of Michigan, Standards for Capturing Microfilm from Digital Images
- Social Security Number Privacy Act, P.A . 454 of 2004

The Contractor shall be responsible for understanding and assisting agencies to implement systems that comply with the following:

- State of Michigan, Best Practices for Reproducing Public Records
- State of Michigan, Best Practices for Capturing Digital Images from Paper or Microfilm
- State of Michigan, Best Practices for Capturing Microfilm from Paper
- State of Michigan, Best Practices for Capturing Microfilm from Digital Images

Additionally, where applicable, the Contractor shall conform to standards as adopted by the American National Standards Institute (ANSI), the Association for Information and Image Management (AIIM) and the International Standards Organization (ISO).

**Article 1, Attachment A**

Pricing

Price sheet description of line items

MICROFILM, SMALL BOX - includes but may not be limited to; storage of approx. ½ cubic foot of 16mm, 35mm or 105mm microfiche/film contained in a storage box sized approximately 15" Deep x 10.5" Wide x 4.75" High. Quantity within boxes may vary from 1 roll to approx. 30 rolls depending on size of film. Current volume is 18520 boxes. Estimated annual volume is based on a 16% growth per year.

MICROFILM, LARGE BOX - includes but may not be limited to; storage of approx.1 cubic foot of 16mm, 35mm or 105mm microfiche/film contained in a storage box sized approximately 15" Deep x 12" Wide x 10" High. Quantity within boxes may vary from 1 roll to approx. 90 rolls depending on size of film. Current volume is 5700 boxes. Little to no growth rate anticipated.

MICROFILM 16mm by the roll - includes but may not be limited to; storage of an individual roll of 16mm microfilm. This option is for agencies with small volumes unable to fill a box. The Contractor may consolidate the storage of these collections as long as the ability to identify and retrieve individually is not lost and the inspection or film verification process is followed.

MICROFILM 35mm by the roll - includes but may not be limited to; storage of an individual roll of 35mm microfilm. This option is for agencies with small volumes unable to fill a box. The Contractor may consolidate the storage of these collections as long as the ability to identify and retrieve individually is not lost and the inspection or film verification process is followed.

MAGNETIC TAPE REELS- includes but may not be limited to; storage of an individual round reel used for storage of data produced from a computerized function. Sizes may vary

MAGNETIC TAPE CARTRIDGES - includes but may not be limited to; storage of an individual cartridge used for storage of data produced from a computerized function.

OPTICAL DISC - includes but may not be limited to; storage of an optical disc contained in jewel case of standard size used for storage of digitized information.

MISC MEDIA – includes but may not be limited to; storage of cabinets or misc sized boxes or storage containers.

DIAZO DUPLICATION (16mm, 35mm) – includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, duplicate microfilm, plastic reel and acid free cardboard container, labeling as original or as instructed, quality measures as defined, quality assurance at level 1 inspection in accordance with ANSI standards and return the film to its vault location.

SILVER DUPLICATION ALL (16mm, 35mm)– includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, processing, duplicate film, plastic reel and acid free cardboard container, labeling as original or as instructed, quality measures as defined, quality assurance at level 1 inspection in accordance with ANSI standards and return the film to its vault location.

DIAZO DUPLICATION (105mm, jacket) – includes but may not be limited to; the removal of the fiche or jacket from the vault location, internal tracking of the fiche or jacket, duplicate fiche, place into an acid free fiche envelope, label as original or as instructed, quality measures as defined, quality assurance at level 1 inspection in accordance with ANSI standards and return the fiche or jacket to its vault location.

RETRIEVAL SERVICES, - includes but may not be limited to; the retrieval of items previously stored by agencies and include the internal tracking performed by the Contractor.



NEW ADDITIONS, INTERFILES & RE-FILES SERVICES (ALL MEDIA TYPES) – MAGNETIC, OPTICAL, ROLL, FICHE OR BOX- includes but may not be limited to; the placing of new items into the collection that have not previously been stored, the return of an item previously retrieved or the interfiling of new items into existing containers. Also included is the internal tracking performed by the Contractor. Items may include small boxes, large boxes, microfilm by the roll, magnetic tape reels, magnetic tape cartridges or optical disc as listed under storage services, Attachment A . For microfilm rolls, this also includes the limited inspection of the first three feet of a roll of film to verify the film base. (This process may be required to be performed on additions, re-files, or interfiles to determine if inspection is warranted. Specific requirements will be determined after contract has been awarded.)

INSPECTION SERVICE - includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, the inspection of roll film performed in accordance with the **ANSI/AIIM MS45- 1990** Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration. The inspection process will identify but may not be limited to inspection date, box ID number, box size, date filmed, film type, roll film size, film created by, container type, reel type, film base, observations of contaminates and recommended corrective action. Film will be inspected and Contractor will provide results of inspection of each roll of film on an inspection form or in a database format approved by the state and return the film to its vault location.

SPLICING/FILM REPAIR - includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, any and all tasks necessary to repair a roll of microfilm in order to restore it to the best possible condition for the purpose of duplication. (There will be many variables associated with this process based on each agencies collection, the process may vary from just a couple minutes per roll to over an hour if extreme measures are needed.

FILM CONTAINER REPLACEMENT - includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, replace with acid free cardboard container, label as original or as instructed and return the film to its vault location.

REEL REPLACEMENT - includes but may not be limited to; the removal of the roll of film from the vault location, internal tracking of the roll of microfilm, replace it with a black plastic reel and return the film to its vault location.

MICROFICHE ORIGINAL FROM COM – includes but may not be limited to; the production of 4"x6" silver halide computer output microfiche (COM) from various magnetic media while meeting or exceeding the State of Michigan Standards.

MICROFICHE COPY FROM COM – includes but may not be limited to; the production of duplicate microfiche onto diazo film. The duplicate 105 microfiche will have a white stripe to highlight the microfiche title. All 105 microfiche jobs must be collated and distributed in sets. The Contractor must have capability to make duplicates of a duplicate using non-stripe diazo.

ALCHEMY DATABASE OR IMPORT UTILITY FORMAT – includes but may not be limited to; the creation of data in a format to be specified that would allow import into the Alchemy product line, all materials and labor associated with "burning" data to DVD or CD media for delivery, labeling as instructed and quality measures as necessary to insure complete and accurate delivery and the delivery media (typically CD or DVD).

DATA FORMATED FOR SELF CONTAINED MEDIA – includes but may not be limited to; the creation of data and the authorized licensing of a self contained retrieval software, all materials and labor associated with "burning" data to DVD or CD media for delivery, labeling as instructed and quality measures as necessary to insure complete and accurate delivery.

NEW SET UP – includes but may not be limited to; the cost associated with routine setup of a new job. This line item must be clearly defined in the Statement of Work.

CUSTOM PROGRAMMING – includes but may not be limited to; the high level of technical skilled labor associated with the development of computer processes necessary to make a process run more efficiently. This line item must be clearly defined in the Statement of Work.

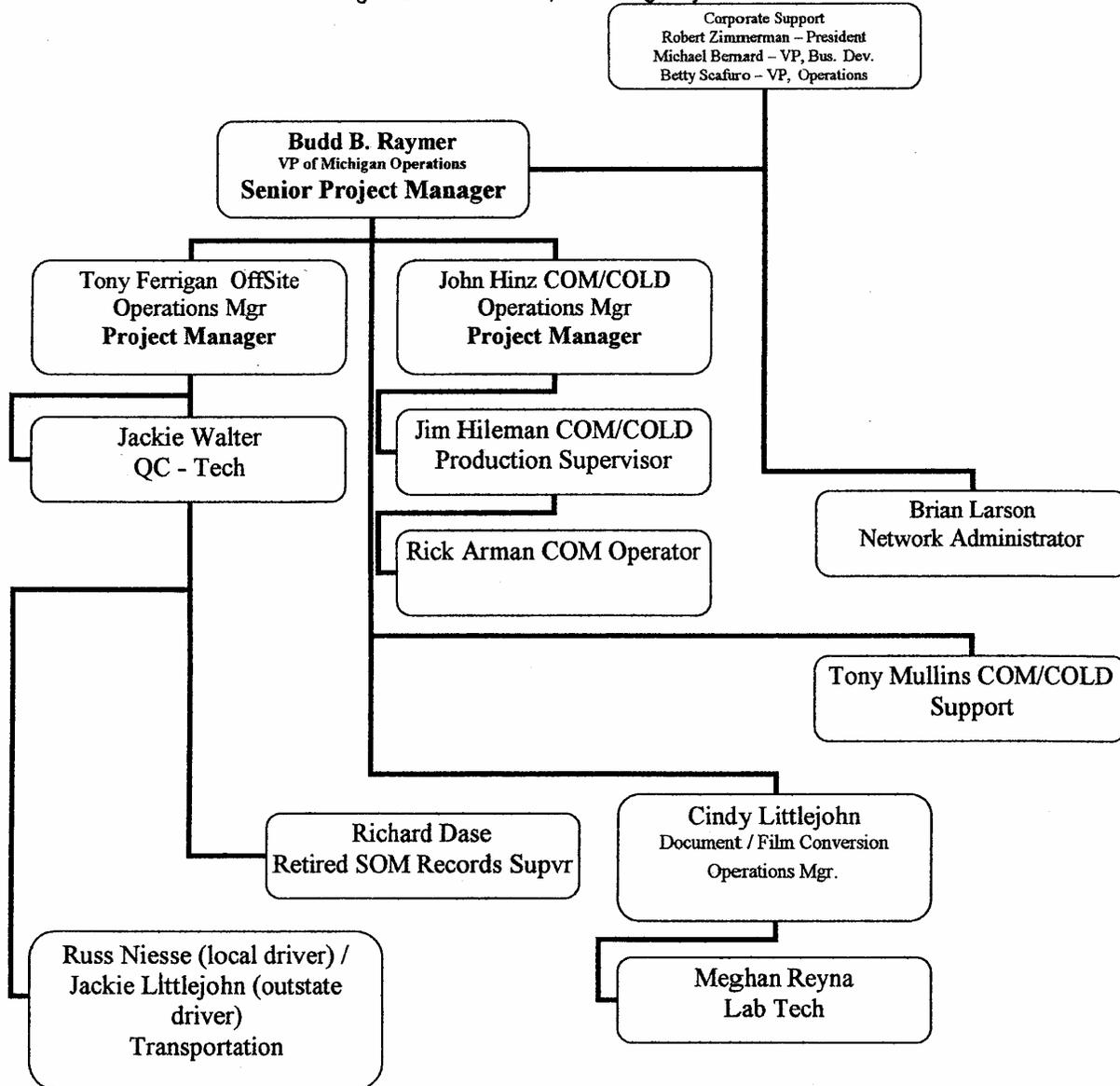


ATTACHMENT 2
DEPARTMENT OF HISTORY, ARTS AND LIBRARIES - RECORDS MANAGEMENT SERVICES
 Annual Volume Estimates

STORAGE SERVICES	CONTAINER SIZE	PRICE PER YEAR	# OF UNITS	CHARGE	
MICROFILM	SMALL 1/2CU FT	\$ 13.08 PER BOX	2092	\$ 27,363.36	
MICROFILM	STANDARD 1CU FT	\$ 23.88 PER BOX	483	\$ 11,534.04	
MICROFILM 16MM	BY THE ROLL	\$ 2.40 PER ROLL	1000	\$ 2,400.00	
MICROFILM 35MM	BY THE ROLL	\$ 3.24 PER ROLL	1000	\$ 3,240.00	
MAGNETIC TAPE	ROUND REELS	\$ 3.00 PER REEL	475	\$ 1,425.00	
MAGNETIC TAPE	CARTRIDGE	\$ 2.52 PER CARTRIDGE	500	\$ 1,260.00	
OPTICAL DISK	STANDARD JEWEL CASE	\$ 2.40 PER DISC	100	\$ 240.00	
MISC MEDIA	VARIABLE	\$ 23.88 PER CU. FT.	50	\$ 1,194.00	
MICROFILM DUPLICATION	FILM THICKNESS	TYPE	PRICE PER UNIT	# OF UNITS	CHARGE
100 FT 16MM ROLL FILM	5 MIL.	DIAZO	\$ 5.35 PER ROLL	50	\$ 267.50
215 FT 16MM ROLL FILM	2.5 MIL.	DIAZO	\$ 7.05 PER ROLL	50	\$ 352.50
100 FT 35MM ROLL FILM	5 MIL.	DIAZO	\$ 7.15 PER ROLL	50	\$ 357.50
100 FT 16MM ROLL FILM	5 MIL.	SILVER	\$ 9.00 PER ROLL	200	\$ 1,800.00
215 FT 16MM ROLL FILM	2.5 MIL.	SILVER	\$ 10.85 PER ROLL	200	\$ 2,170.00
100 FT 35MM ROLL FILM	5 MIL.	SILVER	\$ 12.95 PER ROLL	200	\$ 2,590.00
105MM CUT FICHE OR JACKETS	5 MIL.	DIAZO	\$ 0.35 PER FICHE	500	\$ 175.00
RETRIEVAL SERVICES			PRICE PER UNIT	# OF UNITS	CHARGE
MAGNETIC OR OPTICAL			\$ 0.23 PER ROLL	500	\$ 115.00
MICROFILM ROLL OR FICHE			\$ 0.23 PER ROLL/FICHE	75	\$ 17.25
WHOLE BOX/CONTAINER			\$ 1.95 PER BOX	150	\$ 292.50
ADDITIONS, INTERFILES, AND RE-FILES			PRICE PER TRANSACTION	# OF UNITS	CHARGE
MAGNETIC OR OPTICAL			\$ 0.23 PER REEL/DISC	100	\$ 23.00
MICROFILM ROLL OR FICHE			\$ 0.23 PER ROLL/FICHE	100	\$ 23.00
WHOLE BOX/CONTAINER			\$ 1.95 PER BOX	200	\$ 390.00
MICROFILM INSPECTION AND RESTORATION SERVICES			PRICE PER UNIT	# OF UNITS	CHARGE
INSPECTION SERVICE			\$ 17.50 PER HOUR	500	\$ 8,750.00
SPLICE REPAIR (10 MINUTE MINIMUM)			\$ 15.00 PER HOUR	75	\$ 1,125.00
FILM CONTAINER REPLACEMENT (16mm)			\$ 0.75 PER CONTAINER	100	\$ 75.00
FILM CONTAINER REPLACEMENT (35mm)			\$ 1.15 PER CONTAINER	300	\$ 345.00
REEL REPLACEMENT			\$ 0.35 PER REEL	300	\$ 105.00
MICROFICHE FROM COM			PRICE	# OF UNITS	CHARGE
ORIGINAL			\$ 1.07 EACH	200000	\$ 214,000.00
COPY			\$ 0.15 EACH	700000	\$ 105,000.00
COLD/ENTERPRISE REPORTING			PRICE	# OF UNITS	CHARGE
ALCHEMY DATABASE OR IMPORT UTILITY FORMAT			\$ 0.535 PER MB	10000	\$ 5,350.00
DATA FORMATED FOR SELF CONTAINED MEDIA			\$ 0.535 PER MB	10000	\$ 5,350.00
MISCELLANEOUS			PRICE PER UNIT	# OF UNITS	CHARGE
NEW SET UP			\$ 25.75 PER HOUR	75	\$ 1,931.25
CUSTOM PROGRAMING			\$ 125.00 PER HOUR	50	\$ 6,250.00
				TOTAL	\$ 405,510.90
All quantities listed on the price sheet are estimates only. The State does not commit to procuring any specific amount of services over the life of any contract.					
All pricing quoted within is valid for one hundred twenty (120) days from the due date for this RFP.					



Article 1, Attachment B
Organizational Chart, including Key Personnel





Article 1, Attachment C, D, E & F – Reserved



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

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

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its SubContractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Jim Wilson
 Purchasing Operations
 Department of Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Wilsonj4@michigan.gov
 517-241-1916

2.015 Contract Compliance Inspector

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

Jeff Baldwin, CRM
 Records Analyst
 State of Michigan
 HAL, Records Management Services
 Phone: (517) 335-8965

2.016 Project Manager - Reserved

2.020 Contract Objectives/Scope/Background

2.021 Background - Reserved

2.022 Purpose – Reserved

**2.023 Objectives and Scope - Reserved****2.024 Interpretation - Reserved****2.025 Form, Function and Utility**

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

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

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

2.032 Contract Term

This Contract is for a period of three (3) years, beginning December 15, 2008 through December 14, 2011. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

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

2.040 Contractor Personnel**2.041 Contractor Personnel**

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

(b) Key Personnel

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

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



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

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

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

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

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

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

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



(e) Staffing Levels.

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

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

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

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

2.042 Contractor Identification

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

2.043 Cooperation with Third Parties

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

2.044 Subcontracting by Contractor

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

(b) Contractor shall not delegate any duties under this Contract to a SubContractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all SubContractors and to require Contractor to replace any SubContractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement SubContractor(s) for the removed SubContractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed SubContractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.



If any such incident with a removed SubContractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the SubContractor, to the extent of the Services to be performed by the SubContractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any SubContractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its SubContractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to SubContractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any SubContractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the SubContractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

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

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

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html.

2.052 PM Methodology Standards

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

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

2.053 Adherence to Portal Technology Tools

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

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



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

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

2.054 Acceptable Use Policy

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

2.060 Deliverables

2.061 Ordering

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

2.062 Software

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

2.063 Hardware

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

2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New

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

(b) Prohibited Products

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

2.070 Performance**2.071 Performance, In General**

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

2.072 Time of Performance

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

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

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

2.073 Liquidated Damages- Reserved**2.074 Bankruptcy**

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

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

2.075 Time is of the Essence- Reserved**2.076 Service Level Agreements (SLAs)-Reserved**2.080 Delivery and Acceptance of Deliverables**2.081 Delivery Responsibilities**

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



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

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

2.082 Delivery of Deliverables

- (a) Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.083 Testing

- (a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State shall be entitled to observe or otherwise participate in testing.

2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.



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

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

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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

2.085 Process For Approval of Written Deliverables

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



2.086 Process for Approval of Services

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

2.087 Process for Approval of Physical Deliverables

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

2.088 Final Acceptance

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

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery of Deliverables

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

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

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



2.082 Contractor System Testing- Reserved

2.083 Approval of Deliverables, In General

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

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

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

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

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

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

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



2.084 Process for Approval of Written Deliverables

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

2.085 Process for Approval of Custom Software Deliverables

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

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

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

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

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

2.086 Final Acceptance

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

2.090 Financial**2.091 Pricing**

(a) Fixed Prices for Services/Deliverables

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

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

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

(c) Services/Deliverables Covered

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

(d) Labor Rates

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

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

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

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

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

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

(c) Out-of-Pocket Expenses

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

(d) Pro-ration

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



(e) Antitrust Assignment

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

(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 Holdback-Reserved

2.095 Electronic Payment Availability

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

2.100 Contract Management

2.101 Contract Management Responsibility

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

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

2.102 Problem and Contract Management Procedures

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

2.103 Reports and Meetings

(a) Reports.

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



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

(b) Meetings.

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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

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

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation.



If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

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

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

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

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

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

2.107 Management Tools

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



2.110 Records and Inspections

2.111 Records and Inspections

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

2.112 Errors

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

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

2.120 State Responsibilities

2.121 State Performance Obligations

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

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

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

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

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints.



Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

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

2.140 *Reserved*

2.150 *Confidentiality*

2.151 Freedom of Information

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

2.152 Confidentiality

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

2.153 Protection of Confidential Information

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



2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival- Reserved

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights

2.161 License

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



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

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

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

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

2.162 Source Code Escrow- Reserved

2.163 Rights in Data

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

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

2.164 Ownership of Materials

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

2.165 Standard Software

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

2.166 Pre-existing Materials for Custom Software Deliverables

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

**2.167 General Skills**

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

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

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

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

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

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

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

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



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

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

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

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

2.172 Software Warranties

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

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

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

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

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



(c) Calendar Warranty

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

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

(d) Third-party Software Warranty

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

2.173 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

The Contractor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.174 Physical Media Warranty- Reserved

2.175 Standard Warranties

(a) Warranty of Merchantability

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



(b) Warranty of fitness for a particular purpose

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

(c) Warranty of title

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

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

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

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

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget.



The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit
\$500,000 Fire Damage Limit (any one fire)

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease

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

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

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



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

(b) SubContractors

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

(c) Certificates of Insurance and Other Requirements

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

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

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subContractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subContractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive.



Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(d) Patent/Copyright Infringement Indemnification

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

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

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

2.192 Continuation of Indemnification Obligations

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

2.193 Indemnification Procedures

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

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

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



Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

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

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

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

2.202 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue;



(b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

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

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

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

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

2.212 Termination for Convenience

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



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

2.213 Non-Appropriation

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

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

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

2.214 Criminal Conviction

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

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

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



and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

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

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

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

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

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



2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor

2.221 Termination by Contractor

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

2.230 Stop Work

2.231 Stop Work Orders

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

2.232 Cancellation or Expiration of Stop Work Order

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

2.233 Allowance of Contractor Costs

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

2.240 Reserved



2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

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

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

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

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

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

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

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

2.253 Injunctive Relief

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

2.254 Continued Performance

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



2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

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

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



(i) the ability of Contractor (or a SubContractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or

(ii) whether Contractor (or a SubContractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

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

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

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

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

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

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

2.272 Governing Law

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision

2.281 Environmental Provision

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



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

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

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

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

2.290 *General*

2.291 Amendments

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

2.292 Assignment

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

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

2.293 Entire Contract; Order of Precedence

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



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

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

2.296 Notices

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

State:
State of Michigan
Purchasing Operations
Attention: Jim Wilson
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor(s)
The CSC Group of Michigan
Attn: Budd Raymer
3425 Belle Chase Way
Lansing, MI 48911

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution

(a) Media Releases

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



(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

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

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

**2.306 Prevailing Wage- Reserved****2.307 Call Center Disclosure**

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

2.308 Future Bidding Preclusion

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

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--_00.html. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

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

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

2.322 State Employee Purchases- Reserved

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements- Reserved