



STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **6**
 to
 Contract Number **071B9200230**

CONTRACTOR	MICHIGAN STATE UNIVERSITY
	301 Administration Bldg
	East Lansing, MI 48824-1034
	Rhonda Egidio
	517-355-5010
	egidio@msu.edu
	CV0048200

STATE	Program Manager	Various	LEO
	Contract Administrator	Christopher Martin (517) 643-2833 martinc20@michigan.gov	DTMB

CONTRACT SUMMARY

REHABILITATION SERVICES E-LEARN SYSTEM			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
July 1, 2009	June 30, 2014	2 - 1 Year	June 30, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		June 30, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,890,999.00	\$56,509.50	\$1,947,508.50		

DESCRIPTION
 Effective 9/29/2020, this Contract is increased by \$56,509.50 for use by Michigan Rehabilitative Services. The total amount of \$155,000 (including 98,490.50 of previous authorized funds) will cover the final year of services which will terminate on 6/30/2021.

Please note the Contract Administrator has been changed to Christopher Martin.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval.

**Program Managers
for
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
DTMB	Tina Mitchell	517-241-9629	MitchellT7@michigan.gov
LEO	Sigrid Adams	517-241-8353	AdamsS1@michigan.gov

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909



CONTRACT CHANGE NOTICE

Change Notice Number **5**
 to
 Contract Number **071B9200230**

CONTRACTOR	MICHIGAN STATE UNIVERSITY
	301 Administration Bldg
	East Lansing, MI 48824-1034
	Rhonda Egidio
	(517)355-5010
	egidio@msu.edu
	CV0048200

STATE	Program Manager	Various	MDHHS
	Contract Administrator	Jarrod Barron	DTMB
		(517) 249-0406 barronj1@michigan.gov	

CONTRACT SUMMARY				
REHABILITATION SERVICES E-LEARN SYSTEM				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
July 1, 2009	June 30, 2014	2 - 1 Year	June 30, 2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		June 30, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,893,159.00	(\$2,160.00)	\$1,890,999.00		
DESCRIPTION				
Effective 8/8/2019, the parties reduce the Year 4 (7/1/2019 - 6/30/2020) pricing by \$2,160.00. See attached table for further detail. All other terms, conditions, specifications and pricing remain the same. Per Contractor, Agency and DTMB Procurement agreement.				

**Program Managers
for
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
DTMB	Tina Mitchell	517-241-9629	MitchellT7@michigan.gov
MDHHS	Sigrid Adams	517-241-8353	AdamsS1@michigan.gov

Staffing	Year 4	AN Salary	ORIGINAL Year 4 71/19- 6/30/20	REVISED Year 4 71/19- 6/30/20	REDUCTIO N
Project Manager - Rhonda Egidio	35%	\$143,719	\$54,966	\$54,966	
Fringe	7.65%		\$4,205	\$4,205	
System Architect - Mark Rosenberg	50%	\$60,068	\$32,819	\$32,819	
Fringe	41.59%		\$13,649	\$13,649	
Content Consultant – Carole Sheppard (hourly)	672	57.00	\$41,856	\$41,856	
Fringe	7.65%		\$3,202	\$3,202	
Training			\$3,278	\$1,278	-\$2,000
Server Hosting			\$3,497	\$3,497	
Licenses: e.g. Survey monkey			\$2,186	\$2,186	
Project Supplies and Graphic Services			\$6,556	\$6,556	
SubTotal Direct Cost			\$166,214	\$164,214	
Indirect 8%			\$13,297	\$13,137	-\$160
Total Year 1			\$179,511	\$177,351	-\$2,160

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 4
 to
 CONTRACT NO. 071B9200230
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Michigan State University 301 Administration Bldg East Lansing MI, 48824-1034	Rhonda Egidio	Egidio@msu.edu
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(269)345-2991	*****5984

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Pam Johnson	517-636-6213	johnsonp26@Michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Simon Baldwin	(517) 284-7045	BarronJ1@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Mdit/Mdleg Mrs E-Learn System			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2009	June 30, 2014	2 - 1 Year	June 24, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	5 years	June 30, 2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,021,662.00		\$ 871,497.00	\$1,893,159.00	

DESCRIPTION: Effective April 19, 2016, the parties agree to extend the contract 5 years pursuant to Section 5.7.6 of the Michigan Procurement Policy Manual to continue using the existing proprietary system and services, which have continuing useful life. All other terms, conditions, specifications, and pricing remain the same. See attached price schedule. Per Contractor, Agency and DTMB Procurement agreement and State Administrative Board approval.

FOR THE CONTRACTOR:

MICHIGAN STATE UNIVERSITY

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

William Pemble, IT Division Director

Name & Title

DTMB Procurement

Agency

Date

MICHIGAN STATE
UNIVERSITY

February 5, 2016

Michigan Department of Technology, Management, and Budget
Attn: Jarrod Barron
IT Buyer, DTMB – Procurement
Lewis Cass 2nd Floor, 320 Walnut
PO Box 30026
Lansing, MI 48909
517-284-7045

SUBJECT: Extension for Contract #071B200230 (MSU Ref#RC103727) DHS/DTMB
E-Learn System; Led by Dr. Rhonda K. Egidio at Michigan State
University

Dear Mr. Barron:

Per discussion with Dr. Rhonda Egidio, here is the request for 5 years extended funding for continuing the E-Learn Knowledge Management and On-Line Learning System for Michigan Rehabilitation Services. The current Contract/PO expires June 30, 2016. The annual cost for continuation of the project is:

July 1, 2016-June 30, 2017	\$163,869
July 1, 2017-June 30, 2018	\$168,923
July 1, 2018-June 30, 2019	\$174,135
July 1, 2019-June 30, 2020	\$179,511
July 1, 2020-June 30, 2021	\$185,059



Michigan State University
Office of Sponsored Programs
Hannah Admin. Bldg.
426 Auditorium Rd., Rm. 2
East Lansing, MI 48824-2600

517/884-4275
FAX: 517/432-8035
e-mail
Proposalteam2@osp.msu.edu
web: <http://www.osp.msu.edu>

Total for five years is \$871,497. Payment each year shall be made in four quarterly payments.

Please direct questions of a technical nature to Dr. Rhonda Egidio at (269) 345-2991 (email: Egidio@msu.edu) and administrative, contractual, or budgetary questions to Craig O'Neill at (517) 884-4275 or Proposalteam2@osp.msu.edu.

Thank you for your consideration.

Sincerely,

for *Laura E. Johnston*
Craig O'Neill
Sponsored Programs Manager
P.H.

cc: Sigrid Adams, Jean Williams, Michigan Rehabilitation Services

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B9200230
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Michigan State University 301 Administration East Lansing, MI 48824-1034	Rhonda Egidio	egidio@msu.edu
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(517) 355-5010	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Pam Johnson	517-636-6213	Johnsonp26@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: MDIT/DHS MRS E-Learn System			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2009	June 24, 2014	2, one year	June 30, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	June 30, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$862,135.00		\$159,527.00	\$1,021,662.00	

DESCRIPTION:
 Effective June 16, 2015, the State exercises the final one-year option and adds \$159,527 to the contract. The new contract expiration date is June 30, 2016. All other pricing, terms and conditions remain the same. All other terms, conditions, specifications, and pricing remain the same. Per vendor and agency agreement, DTMB Procurement approval, and approval of the State Administrative Board on June 16, 2015.

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

May 21, 2013

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B9200230
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Michigan State University 301 Administration East Lansing, MI 48824-1034	Rhonda Egidio	Egidio@msu.edu
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517)355-5010	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Pam Johnson	514-636-6213	johnsonp26@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: MDIT/DHS MRS E-Learn System			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2009	June 24, 2014	2, 1 Year Options	June 24, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	June 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$155,126.00		\$862,135.00		
Effective immediately, this Contract is utilizing the first option year and is INCREASED by \$155,126.00. The new end date is June 30, 2015. Please note that the buyer has been changed to Reid Sisson.				
All other terms, conditions, specifications, and pricing remain the same.				
Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated May 21, 2013.				

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

July 7, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B9200230
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (517)355-5010
Michigan State University 301 Administration East Lansing, MI 48824-1034 Email: Egidio@msu.edu		Rhonda Egidio
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-7233
Contract Compliance Inspector: Sara Williams		
MDIT/MDLEG MRS E-Learn System		
CONTRACT PERIOD:		To: June 30, 2014
From: July 1, 2009		
TERMS	SHIPMENT	
N/A	N/A	
F.O.B.	SHIPPED FROM	
N/A	N/A	
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION:		

NATURE OF CHANGE(S):

Effective immediately, the contract start and end dates for this contract are changed to July 1, 2009 and June 30, 2014, respectively. This is to correct the start and end dates that were entered in error on the original contract. All other terms and conditions remain the same.

AUTHORITY/REASON(S):

Per Ad Board approval dated June 16, 2009, agreement from DMB-Purchasing Operations and written agreement from the vendor.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$707,009.00

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

June 17, 2009

NOTICE
OF
CONTRACT NO. 071B9200230
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Michigan State University 301 Administration East Lansing, MI 48824-1034 <p style="text-align: right;">Email: Egidio@msu.edu</p>	TELEPHONE (517)355-5010 Rhonda Egidio
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-7233 Joann Klasko
Contract Compliance Inspector: Sara Williams <p style="text-align: center;">MDIT/MDLEG MRS E-Learn System</p>	
CONTRACT PERIOD: From: July 22, 2009 To: July 21, 2014	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

Estimated Contract Value: \$707,009.00

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

**CONTRACT NO. 071B9200230
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Michigan State University 301 Administration East Lansing, MI 48824-1034 Email: Egidio@msu.edu	TELEPHONE (517)355-5010 Rhonda Egidio VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-7233 Joann Klasko
Contract Compliance Inspector: Sara Williams MDIT/MDLEG MRS E-Learn System	
CONTRACT PERIOD: From: July 22, 2009 To: July 21, 2014	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. This contract has two, one- year options. Estimated Contract Value: \$707,009.00	

THIS IS NOT AN ORDER: The terms and conditions of this contract are enclosed. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Original contract was awarded on the basis of our inquiry bearing the ITB# 071I9200166.

FOR THE VENDOR:

Firm Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date

FOR THE STATE:

Signature Joann Klasko, Buyer
Name IT Division
Title
Date



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No.071B9200230
DEQ/MDIT E-LEARN SYSTEM

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



Table of Contents

DEFINITIONS	7
Article 1 – Statement of Work (SOW)	9
1.000 Project Identification	9
1.001 Project Request	9
1.002 Background	9
1.100 Scope of Work and Deliverables	10
1.101 In Scope	10
1.102 Out Of Scope	10
1.103 Environment	10
1.200 Roles and Responsibilities	15
1.201 Contractor Staff, Roles, And Responsibilities	15
1.202 State Staff, Roles, And Responsibilities	16
1.203 Other Roles And Responsibilities	18
1.300 Project Plan	18
1.301 Project Plan Management	18
1.302 Reports	19
1.400 Project Management	20
1.401 Issue Management	20
1.402 Risk Management	20
1.403 Change Management	20
1.500 Acceptance	21
1.501 Criteria	21
1.502 Final Acceptance	21
1.600 Compensation and Payment	21
1.601 Compensation And Payment	21
1.602 Holdback	23
Article 2, Terms and Conditions	24
2.000 Contract Structure and Term	24
2.001 Contract Term	24
2.002 Options to Renew	24
2.003 Legal Effect	24
2.004 Attachments & Exhibits	24
2.005 Ordering	24
2.006 Order of Precedence	24
2.007 Headings	25
2.008 Form, Function & Utility	25
2.009 Reformation and Severability	25
2.010 Consents and Approvals	25
2.011 No Waiver of Default	25
2.012 Survival	25
2.020 Contract Administration	25
2.021 Issuing Office	25
2.022 Contract Compliance Inspector	26
2.023 Project Manager	26
2.024 Change Requests	26
2.025 Notices	27
2.026 Binding Commitments	27
2.027 Relationship of the Parties	27
2.028 Covenant of Good Faith	28
2.029 Assignments	28
2.030 General Provisions	28
2.031 Media Releases	28
2.032 Contract Distribution	28
2.033 Permits	28



2.034	Website Incorporation	28
2.035	Future Bidding Preclusion	29
2.036	Freedom of Information	29
2.037	Disaster Recovery	29
2.040	Financial Provisions	29
2.041	Fixed Prices for Services/Deliverables	29
2.042	Adjustments for Reductions in Scope of Services/Deliverables	29
2.043	Services/Deliverables Covered	30
2.044	Invoicing and Payment – In General	30
2.045	Pro-ration	31
2.046	Antitrust Assignment	31
2.047	Final Payment	31
2.048	Electronic Payment Requirement	31
2.050	Taxes	31
2.051	Employment Taxes	31
2.052	Sales and Use Taxes	31
2.060	Contract Management	31
2.061	Contractor Personnel Qualifications	31
2.062	Contractor Key Personnel	32
2.063	Re-assignment of Personnel at the State’s Request	32
2.064	Contractor Personnel Location	32
2.065	Contractor Identification	33
2.066	Cooperation with Third Parties	33
2.067	Contract Management Responsibilities	33
2.068	Contractor Return of State Equipment/Resources	33
2.070	Subcontracting by Contractor	33
2.071	Contractor full Responsibility	33
2.072	State Consent to delegation	33
2.073	Subcontractor bound to Contract	34
2.074	Flow Down	34
2.075	Competitive Selection	34
2.080	State Responsibilities	34
2.081	Equipment	34
2.082	Facilities	34
2.090	Security	34
2.091	Background Checks	34
2.092	Security Breach Notification	35
2.093	PCI DATA Security Requirements	35
2.100	Confidentiality	35
2.101	Confidentiality	35
2.102	Protection and Destruction of Confidential Information	36
2.103	Exclusions	36
2.104	No Implied Rights	36
2.105	Respective Obligations	36
2.110	Records and Inspections	36
2.111	Inspection of Work Performed	36
2.112	Examination of Records	36
2.113	Retention of Records	37
2.114	Audit Resolution	37
2.115	Errors	37
2.120	Warranties	37
2.121	Warranties and Representations	37
2.122	Warranty of Merchantability	38
2.123	Warranty of Fitness for a Particular Purpose	39
2.124	Warranty of Title	39
2.125	Equipment Warranty	39
2.126	Equipment to be New	39
2.127	Prohibited Products	39
2.128	Consequences for Breach	40
2.130	Insurance	40



2.131	Liability Insurance	40
2.132	Subcontractor Insurance Coverage	41
2.133	Certificates of Insurance and Other Requirements	41
2.140	Indemnification	42
2.141	General Indemnification	42
2.142	Code Indemnification	42
2.143	Employee Indemnification	42
2.144	Patent/Copyright Infringement Indemnification	42
2.145	Continuation of Indemnification Obligations	42
2.146	Indemnification Procedures	42
2.150	Termination/Cancellation	43
2.151	Notice and Right to Cure	43
2.152	Termination for Cause	43
2.153	Termination for Convenience	44
2.154	Termination for Non-Appropriation	44
2.155	Termination for Criminal Conviction	44
2.156	Termination for Approvals Rescinded	44
2.157	Rights and Obligations upon Termination	45
2.158	Reservation of Rights	45
2.160	Termination by Contractor	45
2.161	Termination by Contractor	45
2.170	Transition Responsibilities	45
2.171	Contractor Transition Responsibilities	45
2.172	Contractor Personnel Transition	46
2.173	Contractor Information Transition	46
2.174	Contractor Software Transition	46
2.175	Transition Payments	46
2.176	State Transition Responsibilities	46
2.180	Stop Work	46
2.181	Stop Work Orders	46
2.182	Cancellation or Expiration of Stop Work Order	47
2.183	Allowance of Contractor Costs	47
2.190	Dispute Resolution	47
2.191	In General	47
2.192	Informal Dispute Resolution	47
2.193	Injunctive Relief	48
2.194	Continued Performance	48
2.200	Federal and State Contract Requirements	48
2.201	Nondiscrimination	48
2.202	Unfair Labor Practices	48
2.203	Workplace Safety and Discriminatory Harassment	48
2.210	Governing Law	48
2.211	Governing Law	48
2.212	Compliance with Laws	49
2.213	Jurisdiction	49
2.220	Limitation of Liability	49
2.221	Limitation of Liability	49
2.230	Disclosure Responsibilities	49
2.231	Disclosure of Litigation	49
2.232	Call Center Disclosure	50
2.233	Bankruptcy	50
2.240	Performance	50
2.241	Time of Performance	50
2.242	Service Level Agreement (SLA)	50
2.243	Liquidated Damages	51
2.244	Excusable Failure	51
2.250	Approval of Deliverables	52
2.251	Delivery of Deliverables	52
2.252	Contractor System Testing	52



2.253	Approval of Deliverables, In General	53
2.254	Process for Approval of Written Deliverables	54
2.255	Process for Approval of Custom Software Deliverables	54
2.256	Final Acceptance	55
2.260	Ownership	55
2.261	Ownership of Work Product by State	55
2.262	Vesting of Rights	55
2.263	Rights in Data	55
2.264	Ownership of Materials	55
2.270	State Standards	56
2.271	Existing Technology Standards	56
2.272	Acceptable Use Policy	56
2.273	Systems Changes	56
2.280	Extended Purchasing	56
2.281	MiDEAL (Michigan Delivery Extended Agreements Locally	56
2.282	State Employee Purchases	56
2.290	Environmental Provision	57
2.291	Environmental Provision	57
2.300	Deliverables	58
2.301	Software	58
2.302	Hardware	58
2.303	Equipment to be New	58
2.304	Equipment to be New and Prohibited Products	58
2.310	Software Warranties	59
2.311	Performance Warranty	59
2.312	No Surreptitious Code Warranty	59
2.313	Calendar Warranty	59
2.314	Third-party Software Warranty	60
2.315	Physical Media Warranty	60
2.320	Software Licensing	60
2.321	Cross-License, Deliverables Only, License to Contractor	60
2.322	Cross-License, Deliverables and Derivative Work, License to Contractor	60
2.323	License Back to the State	60
2.324	License Retained by Contractor	60
2.325	Pre-existing Materials for Custom Software Deliverables	60
2.330	Source Code Escrow	61
2.331	Definition	61
2.332	Delivery of Source Code into Escrow	61
2.333	Delivery of New Source Code into Escrow	61
2.334	Verification	61
2.335	Escrow Fees	61
2.336	Release Events	61
2.337	Release Event Procedures	62
2.338	License	62
2.339	Derivative Works	62

Appendices:

Appendix A -



DEFINITIONS

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday, Office of State Employer mandated furlough day , or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DMB	Michigan Department of Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	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.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 Project Request

The State of Michigan (State), through the Department of Management & Budget (DMB) / Department of Information Technology (DIT), has issued this to provide hosting services, technical and operational support for the Michigan Rehabilitation Services (MRS) E-Learn Web Site. This site will provide written training course materials essential to meet professional vocational rehabilitation counselor standards as required by Federal Legislation to assure the highest quality of customer services provided to citizens with disabilities in the State of Michigan.

The contractor shall be responsible for:

- Obtaining the knowledge necessary to operate and support the existing MRS E-Learn Web Site.

The purpose of this contract is to obtain a new contract for hosting services, technical support, new development and continued operation of the current MRS E-Learn web site. The State of Michigan will provide the computer hardware and software for the E-Learn Web Site.

The contract will be issued for five (5) years with two (2) one year extensions.

E-Learn is administered by Michigan Rehabilitation Services (MRS), under the Michigan Department of Energy, Labor & Economic Growth (DELEG) and is accessed statewide by MRS staff.

1.002 Background

The Mission of MRS is: *“MRS partners with individuals and employers to achieve quality employment outcomes and independence for persons with disabilities.”*

MRS began development of the MRS E-Learn Web Site in 1998-1999. MRS was awarded a grant to develop an on-line learning center for vocational rehabilitation counselors. This web based system would allow MRS Rehabilitation Counselors to take accredited rehabilitation courses on line to maintain their rehabilitation counseling certifications.

MRS created the E-Learn web site in close collaboration with the Rehabilitation Education and Change (REACH) program at Michigan State University. This interactive distance education site allows MRS staff, at all levels, access to bureau specific information, on-demand learning and up-to-date changes in critical areas such as policy or MRS procedures.

The MRS E-Learn Web Site consists of two sections:

E-Learn (OLC) On-line Learning Center

The OLC section of E-Learn houses training courses available to MRS staff and general public. Courses in the OLC are interactive and custom designed by professionals who have a thorough understanding of the rehabilitation processes and MRS policy and procedures.

E-Learn (KnowIT)

This is an interactive web based system that provides access to the MRS Policy manual, forms, job aids, information and resources that enhance customer service. Current information and opportunities to share experiences and views about this information electronically, assists staff to rapidly receive changes in policy, guidelines, and other resources to carry out their work.

The system is designed to assist counselors and other MRS staff to develop skills in researching, assessing, and using information more effectively to develop employment plans with customers. This site also includes a direct link to the Department of Energy, Labor and Economic Growth’s Internet and Intranet sites as well as the MRS Intranet web site.



The MRS E-Learn site was created to enhance staff's learning and development, increase cost effectiveness, and provide staff with rapid access to up-to-date accurate rehabilitation related information and resources to facilitate improved service to customers.

1.100 Scope of Work and Deliverables

1.101 In Scope

The contractor shall provide technical support for all existing E-Learn software applications and website, and support all new applications and/or functionality developed on the E-Learn system. All ongoing technical support and scope of work deliverable listed below shall be provided:

The MRS E-Learn Web Site consists of two sections:

- KnowIT (E-Learn)
- On-Line Learning Center (OLC)
-

Technical support includes:

- Technical consulting
- Maintain current infrastructure of system (provided by the State)
- Server/application security, maintenance, and hosting
- Software development and deployment
- End user support

Ongoing support includes:

- Development of new course content in one or more of the following areas in the vocational rehabilitation field:
 - **Core:** Those skills needed to perform the primary tasks of a Vocational Rehabilitation Counselors
 - **Specialty:** Skills or area(s) of specific expertise needed to perform tasks of caseload assignment / position
 - **Enhancement:** Skills that support the bureau's "Constructive Culture" and the State's values of Inclusion, Teamwork, Integrity and Excellence.
- Maintain accuracy of course content, information and resources
- Operation includes hosting of the hardware, software, and applications; all of which are owned by the State.

In addition to ongoing technical support, web hosting, and security patching, the contractor shall develop additional software for MRS E-Learn site, as well as enhancements and upgrades to existing applications and website functionality. Transition services

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

1.102 Out Of Scope

Proposals for replacement systems are out of scope.

1.103 Environment

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

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. The Contractor awarded the contract must request any exception to State IT policies



and standards in accordance with MDIT processes. The State may deny the exception request or seek a policy or standards exception.

Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:

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

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

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDIT, before work may proceed based on the changed environment.

Enterprise IT Security Policy and Procedures:

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

The State's security environment includes:

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

MDIT requires that its single - sing-on security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDIT's Office of Enterprise Security.

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

IT Strategic Plan:

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

IT eMichigan Web Development Standard Tools:

http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf

The State Unified Information Technology Environment (SUITE):

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

Agency Specific Technical Environment

Software

1. OLC (LMS/LCMS):TopClass v3.1 from WBT. Release date approx. 2000, indefinite license.
2. E-Learn legacy system: custom built, combination of Witango v5 from Witango Technologies Pty Ltd, classic ASP.



3. E-Learn new system and future OLC: DotNetNuke v4.5 open source VB.NET base code from DotNetNuke Corporation. E-Learn will be upgrading to newest version upon transition to new server. Custom built skin, modifications to some default functionality and many custom modules.
 - a. Seamus search engine v2.4 by Venexus.
4. E-Learn legacy system is a combination of: SQL Server 2005 Express Edition with Advanced Services (full-text search).
5. FTP on server: Serv-U FTP v6.0 from RhiniSoft. Supports multiple simultaneous SSL-protected sessions.
6. FTP on new server: Windows IIS 7.0 integrated FTP module.

1.104 Work And Deliverable

Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below.

The Contractor shall have technical knowledge of E-Learn software, hardware, database, development techniques, security, and operations in order to provide technical support under this contract. The Contractor shall have knowledge of program policies and program reporting requirements in order to support, enhance, and develop software and hardware solutions to meet the data and reporting needs of MRS. The Contractor shall have knowledge of the user community and their uses of the E-Learn data, software, and hardware. The contractor shall have knowledge / expertise in the secure collection, transmission, maintenance, and reporting of sensitive information using Internet-based technologies and software.

The Contractor shall provide hosting and technical support for all existing E-Learn software applications and website, including enhancements done to existing applications and support all new applications and / or functionality developed on the E-Learn system. All ongoing technical support and scope of work deliverables listed below shall be provided up to the contract amount and according to the MRS-approved contract budget. Ongoing technical support includes:

A1. Provide Hosting for the MRS E-Learn Server and Existing Security Architecture

Timeline: Duration of Contract

Elements, & Objectives for Hosting:

The Contractor shall provide for secure, reliable server hosting services through the contractor’s subcontractor D. A. Rainsberger Co. Minimum requirements include:

- Physical security of the hosting location 24/7 and 365 day (monitored).
- Controlled access to facilities during business, including logged access by time and date
- Fire detection and a suppression system for early detection of fires and suppression in a manner that does not damage state equipment.
- Air conditioning monitored facilities to control for temperature and humidity.
- Facility monitoring for electrical and mechanical failures, fire detection, and leak detection.
- Network problem detection, tracking, and resolution process.
- Installation of new and / or replacement hardware (procured by the State).
- Backup of server and copies of server tapes to be stored off site.

Contractor security service includes ongoing review of current security practices and technologies, identification of potential internal and external security risks to E-Learn, and suggestions and / or recommendations for potential system policy, use, or technical changes intended to enhance security and reduce the potential for security breaches. Michigan State Government Network Security Policy URL



reference is http://www.michigan.gov/documents/141017_36297_7.pdf. Security status reports must be submitted to MRS and DIT project managers on a monthly basis.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

2. B Provide maintenance, new development and technical support for E-Learn which consists of two sections:

- KNOWIT
- On-Line Learning Center (OLC)

Timeline: Duration of Contract

Elements, & Objectives:

Maintenance

1. Troubleshoot and resolve system / technical issues with E-Learn systems.
2. Understand and maintain ADA standards to ensure equal access for all personnel including persons with visual impairments
3. Provide E-Learn directed end user support.
4. Maintain quality review of site, including all links and web sites.
5. Clean up all error messages and bad links.
6. Maintain a data statistical system to E-Learn which includes:
 - a. OLC courses that generate greatest response and completion rates from users
 - b. Analyze and report on usage
 - c. Including evaluation in a quarterly report
 - d. Hits to the E-Learn website, and session activity grouped by users
 - e. Relative importance of various E-Learn pages
 - f. Number of unique visitors
 - g. Incorporate information in quarterly reports
7. Maintain course facilitation for current E-Learn courses.
 - a. Follow up / initiate contact with learners on course work (this includes encouraging collaboration among learners, feedback, responding to questions, promoting discussion and supporting application of information in course. In the Ethics courses, this also includes extensive written feedback and discussion with learners on their scenario summaries and analyses.
8. Make time sensitive updates to E-Learn content according to emerging MRS policy, State and Federal regulations.
9. Maintain and manage CRC credits and OLC that includes reporting on which OLC courses generate greatest response and completion rates from users.
10. Maintain and manage CRC credits and OLC courses including confirmation that each requirement has been met.
11. Update CRC records for annual submission.
12. Provide support and problem solves any access issues.

New Development

1. Provide development to support MRS identified authors for the development of three (3) on-line courses and two Fast Facts. These on-line courses shall require no more than one hour to complete and be CRC eligible. Courses shall include at least one of the following: audio clip(s), video clip(s), job aid(s), discussion, and / or quiz functions. Topic(s) and subject matter to be determined at a later date. Counselor input shall be solicited for job aids. Contractor shall post completed materials on E-Learn.
2. Integrate digital media (auditory and visual) into traditional content in high impact areas of E-Learn.



3. Work with assigned counselors to develop a series of up to five job aides or tools to meet counselor's expressed needs.
4. Make requested revisions / enhancements, as permitted by funding in a timely fashion to meet Federal Requirements throughout FY 09 as submitted by a the Staff Development Unit and others as requested.
5. Improve utilization functionality and develop new features for the Events Center.
6. Improve utilization functionality and develop new features for the Search function.
7. Create a location and link for evaluation results of training listed in the Events Center and OLC, with administrative access only.
8. Work with E-Learn Champions to develop at least three job aids for common tasks that can be automated.
9. Make time sensitive updates to E-Learn content according to emerging MRS policy, State and Federal regulations.
10. Continue with E-Learn Champion focus group to make quality improvements to E-Learn based on user input.
12. Incorporate continuous improvement processes into all facets of E-Learn.
13. Enter new users into database with appropriate rights.
14. Analyze and report on usage, including evaluation in quarterly report.
15. Provide quarterly evaluation and statistical review report.
16. Provide year-end evaluation and statistical review report.
17. Provide development support for two new OLC courses; or a major redevelopment of existing course in Core, Specialty and Enhancement skill areas, with priority given to casework issues. Specific subject matter shall be based on need areas identified in comprehensive needs assessment, outlined in audit, case review findings and staff evaluation of current trainings.
18. Facilitate / assist MRS with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting.
19. Continue implementation of new OLC environment including troubleshooting for OLC migration issues
20. Devise and implement new usability and functionality improvements and improve cross-functionality between E-Learn and OLC environments.
21. Create instant reports for courses and facilitators.
22. Integrate one-page instant feedback mechanism into course evaluations.
23. Update MRS Favorites tool to include an automatic OLC active course marker.
24. Develop user learning profile areas to generate reports of OLC and other training courses taken and current progress.
25. Add HTML rescan functionality to identify and flag Manual links with helpful iconography.
26. Support blended learning events by hosting online readiness and post application activities.
27. Create supplemental materials that may include quizzes, scenarios, power point summaries, etc.
28. Incorporate strategies for adding relevant visuals that enhance learning.
29. Create new OLC orientation materials (power point and pop-up for navigation tips for first time users in a new course and for the first quiz.
30. Create a welcome video and downloadable course guides for courses with highest registrations.
31. Provide orientation services for all learners, including the option of telephone orientation for first-time users.
32. Collaborate with the Staff Development Unit for new training initiatives.
33. Add Events and Learning Center as an automatic link in the Favorites section.

Technical Assistance / Support

1. Provide technical support to MRS for blended learning, including the development of materials only for use in staff meetings and the use of teleconferences.
2. Participate and provide technical support for and with MRS in planning meetings.
3. Work with internal MRS marketing strategies.
4. Continue to develop and post job aides to support trainings as suggested by MRS.



5. Provide technical assistance for blended learning performance supports and for high priority training topics (example: one hour teleconferences on specific topics identified by MRS that blend presentation, E-Learn resources, and discussion).
6. Continue with training of MRS Staff Development Unit personnel as designated on the maintenance of the E-Learn system.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

A. Contractor Staff

Rhonda Egidio, Ph.D., Director REACH, Professor Michigan State University shall be the Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

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

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

- *Project Manager*
- *System Architect*

Rhonda Egidio, Ph.D., Director REACH, Professor Michigan State University shall be the project manager/technical to interact with the designated personnel from the State.. The project manager/technical lead shall coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager/technical lead responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget



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

1. Travel:

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor, meal, parking, etc.
- b. Travel time will not be reimbursed.

2. Additional Security and Background Check Requirements:

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT.

Contractor shall pay for all costs associated with ensuring their staff meets all requirements.

The Project Team includes:

Project Manager: Rhonda Egidio, Ph.D. Director REACH, Professor Michigan State University is project manager and team leader for this project. She is the designated SPOC-Single Point of Contact. Her expertise includes adult learning, e-learning, knowledge management systems and team processes.

460 Erickson Hall
Michigan State University
East Lansing, MI 48824-1034
269-345-2991
269-599-2382 c
egidio@msu.edu

System Architect: Orion Smith, REACH Technology Coordinator, Michigan State University. His duties include maintaining hosting services, developing and problem solving site infrastructure, customizing software and technical processes for continuous and smooth operation of E-Learn features

457 Erickson Hall
Michigan State University
East Lansing, MI 48824-1034
517-432-4022
smithori@msu.edu

Content Specialist: Carole Sheppard, MA, Rehabilitation content expert, online instructor/facilitator, and online instructional designer

4145 Avery
Detroit MI 48208
313-418-6454
sheppcas@msu.edu

Server Hosting Provider: D. A. Rainsberger Co.
Douglas Horne
Technology Services Director
D. A. Rainsberger Co.
801 S. Waverly Rd, Suite #300
Lansing, MI 48917-4200
517-327-8329

1.202 State Staff, Roles, And Responsibilities



The State will provide the following resources for the Contractor’s use on this project:

- Content Support

The State project team will consist of Executive Subject Matter Experts (SME’s), project support, and a MDIT and Agency project manager:

Executive Subject Matter Experts

The Executive Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The Executive SME’s will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor’s project manager, within 48-hours of their expected decision date.

Name	Agency/Division	Title	Phone/e-mail
Margie Hadsell	DELEG/MRS	Workforce Improvement Division Director	517-373-7458 hadsellm@michigan.gov
Vicki Rafferty	DELEG/MRS/SDU	Manager	517-373-6972 RaffertyV@michigan.gov
Paula Brzezinski	DELEG/MRS/SDU	Human Resource Developer	517-335-5887 BrzezinskiP@michigan.gov

State Project Manager- (MDIT and Agency)

MDIT will provide a Project Manager who will be responsible for the State’s infrastructure and coordinate with the Contractor in determining the system configuration.

The State’s Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.



Name	Agency/Division	Title
Walt Czubak	MDIT	Project Manager
Paula Brzezinski	MRS/SDU	Project Manager

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

Name	Agency/Division	Title
Sara Williams	MDIT/Bureau of Strategic Policy	Contract Administrator

B. On Site Work Requirements

1. Location of Work

The work is to be performed, completed, and managed at the following locations:

Michigan Rehabilitation Services, 1048 Pierpont, Suite 6, Lansing, Michigan or Contractor's Site.

Hosting: D. A. Rainsberger Co., 801 S. Waverly Rd, Suite #300, Lansing, Michigan

2. Hours of Operation:

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

1.203 Other Roles And Responsibilities

RESERVED

1.300 Project Plan

1.301 Project Plan Management

Project Plan

Contractor shall provide a final Project Plan, see Attachment 1, that includes necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State.

- 1. The Preliminary Project Plan shall include a MS Project plan or equivalent (check the SUITE/PMM standard):
 - a. A description of the deliverables to be provided under this contract.
 - b. Target dates and critical paths for the deliverables.
 - c. Identification of roles and responsibilities, including the organization responsible. Contractor is to provide a roles and responsibility matrix.
 - d. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
 - e. Internal milestones
 - f. Task durations

Orientation Meeting

Upon 10 calendar days from execution of the Contract, the Contractor shall be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting shall be held in Lansing,



Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Performance Review Meetings

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

Project Control

1. The Contractor shall carry out this project under the direction and control of MDIT/DELEG/MRS.
2. Within 30 working days of the execution of the Contract, the Contractor shall submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
 - The Contractor's project organizational structure.
 - The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
 - The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor shall manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
 - a. Contractor shall use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
 - Staffing tables with names of personnel assigned to Contract tasks.
 - 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 180 calendar days, updated semi-monthly).
 - Updates must include actual time spent on each task and a revised estimate to complete.
 - Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that shall support reporting in compliance with the State standards.

1.302 Reports

Reporting formats must be submitted to the State's Project Manager for approval within 30 business days after the execution of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

- Updated project plan
- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Issues
- Action Items Status
- Repair Status
- Maintenance Activity



1.400 Project Management

1.401 Issue Management

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

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

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

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

Level 1 – Business leads

Level 2 – Project Managers

Level 3 – Executive Subject Matter Experts (SME's)

1.402 Risk Management

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

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

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

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

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

1.403 Change Management

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

If a proposed contract change is approved by the Agency, the Contract Administrator shall 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 Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.

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

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

1.500 Acceptance

1.501 Criteria

Contractor must meet and provide acceptable deliverables requested under this contract.

1.502 Final Acceptance

Final acceptance will be based on the weighted measures and agreement of the review committee that the best candidate has been chosen.

1.600 Compensation and Payment

1.601 Compensation And Payment

Method of Payment

The project will be paid by four quarterly invoices.

Budget for year 1 and also cost figures for years 2 – 5 and 6 - 7 if extended.

Budget Year 1 July 1, 2009-June 30, 2010: Total \$135,303

Staffing	Time	Cost
Project Manager Rhonda Egidio	20%	\$26,429
Fringe		\$7,588
System Architect/ Orion Smith	50%	\$25,664
Fringe		\$11,413
Department Support; student hourly		\$3000
Content Consultant–Carole Sheppard	672 hours	\$36,960
Fringe		\$2827
ADA Site Review Consultant - Year 1 only		\$3000
Training		\$1000
Server Hosting		\$2400
Project Supplies and Services		\$5000
SubTotal Direct Cost		\$122,281
* Indirect 8%		\$10,022
Total Year 1		\$135,303



Notes:

*Indirect Charges - The direct costs are those which can be identified as specific costs of the project. Costs of the project which cannot be specifically identified such as electricity, heat, and other services are applied as an indirect cost percentage. Included is a link to MSU's indirect cost information which provides additional information. <http://www.cga.msu.edu/icrate.asp>

Department Support- student worker for link checking and miscellaneous support services

ADA Site Review Consultant- to do a thorough review of E-Learn to determine any ADA concerns. We have continuously kept up with this but with the integration of KnowIT and OLC, a professional ADA site assessor in Year 1 only shall give us a complete evaluation of the merger and identify any issues.

Training – to include training on new technologies; software to be used in the continual evolution of E-Learn

Server hosting – recommended to secure hosting services of *D.A. Rainsberger Co. (DARCO)*-see page 11

Project Supplies and Services – search and development software purchases/ upgrades as needed, development computer for System Architect when needed (current one is fine for now), phone or Skype services for virtual meetings/support, office supplies. These costs are not entirely predictable, however we have included a maximum figure and shall charge for actual expenditures.

MSU Overhead (indirect) -8% for State of Michigan

Projected Budgets for Years 2-5

These figures are calculated given the same cost fields as above (except the ADA consultant site review is for Year 1 only) with a 3% cost of living increase each year

Year 2 July 1, 2010 - June 30, 2011	\$136,387
Year 3 July 1, 2011- June 30, 2012	\$140,764
Year 4 July 1, 2012- June 30, 2013	\$145,232
Year 5 July 1, 2013- June 30, 2014	\$149,844

Projected Budget for Years 6-7

Year 6 July 1, 2014- June 30, 2015	\$154,605
Year 7 July 1, 2015- June 30, 2016	\$159,527

Statements of Work and Issuance of Purchase Orders

- Unless otherwise agreed by the parties, each Statement of Work will include:
 1. Background
 2. Project Objective
 3. Scope of Work
 4. Deliverables
 5. Acceptance Criteria
 6. Project Control and Reports
 7. Specific Department Standards
 8. Payment Schedule
 9. Project Contacts
 10. Agency Responsibilities and Assumptions
 11. Location of Where the Work is to be performed
 12. Expected Contractor Work Hours and Conditions



- 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. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

Invoicing

Contractor shall submit properly itemized invoices to "Bill To" Address on Purchase Order. Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

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

1.602 Holdback

RESERVED



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of 5 years beginning June 22, 2009 through June 21, 2014. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.130**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued. A cost of living increase of 3% per year will be added to the final bid amount for the beginning the second year of the contract and continue every year the contract is in place.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.



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

2.007 Headings

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

2.008 Form, Function & Utility

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.

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and **MDIT/DELEG/MRS** (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

Joann Klasko

Buyer
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: KlaskoJ@michigan.gov
Phone: (517)241-7233



2.022 Contract Compliance Inspector

The Director of Purchasing Operations directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. Purchasing Operations is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contract Compliance Inspector for this Contract is:

Sara Williams
DELEG/Contract Liaison
Operations Center
7285 Parsons Drive
Lansing, MI 48913
Email: Williamss11@michigan.gov
Phone: (517)335-1277

2.023 Project Manager

The following individual will oversee the project:

DELEG Project Manager:
Paula Brzezinski, Human Resource Developer
DELEG/MRS/SDU
1048 Pierpont, Suite 6, Lansing, MI 48913
Email: brzezinskip@michigan.gov
Phone: (517)335-5887
Fax: (517)241-2070

DIT Project Manager:
Walt Czubak, Manager
MDIT
Victor Building
201 S. Washington Square
Lansing, MI 48913
Email: Czubakw@michigan.gov
Phone: (517)241-0421

2.024 Change Requests

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

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.

(1) Change Request at State Request

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").



- (2) Contractor Recommendation for Change Requests:
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.
- (3) 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.
- (4) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (5) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (6) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

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

State:

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

Contractor:

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties



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

2.028 Covenant of Good Faith

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

2.029 Assignments

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

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

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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



2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

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

2.037 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.



2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d1) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government 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.

(d2) Contract Payment Schedule

1. Contractor request for performance-based payment.
The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
2. Approval and payment of requests.
The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.

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



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

2.045 Pro-ration

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

2.046 Antitrust Assignment

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.

2.047 Final Payment

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

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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



similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

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



2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

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

2.067 Contract Management Responsibilities

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. 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 the Project Plan is likely to delay the timely achievement of any Contract tasks.

The Contractor will provide the Services/Deliverables 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.

2.068 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

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

2.072 State Consent to delegation

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



schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

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.

2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities

RESERVED

2.090 Security

2.091 Background Checks

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel 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.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI DATA Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor will contact the Department of Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor will continue to treat cardholder data as confidential upon contract termination.

The Contractor will provide the Department of Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor will advise the Department of Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.

2.100 Confidentiality

2.101 Confidentiality

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



2.102 Protection and Destruction of Confidential Information

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 to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions in 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 the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

For three years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing



Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

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

2.114 Audit Resolution

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

2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.



- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract 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 or on the container or label.



2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operates and performs 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 (1) one year commencing upon the first day following Final Acceptance.

Within **2** business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must 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 must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

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

2.126 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.

2.127 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 2.024**.



2.128 Consequences for Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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 under this Contract.

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

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

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

See www.michigan.gov/dleg.

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

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

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.

- 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, 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 must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease
- 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 must 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 the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this 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) must 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.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “Certificates”). The Certificate must be on the standard “accord” form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured 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.

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

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must 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.

2.142 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.

2.143 Employee Indemnification

In any 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 must 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.

2.144 Patent/Copyright Infringement Indemnification

RESERVED

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under 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 before expiration or cancellation.

2.146 Indemnification Procedures

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

- (a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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 the Contractor relieves the Contractor of its



indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within **30** days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense if the claim is appropriate for indemnification, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.



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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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



2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in



no event will exceed 60 days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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.

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

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

2.180 Stop Work

2.181 Stop Work Orders

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 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.150**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work



stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.130**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this Section.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

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

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

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

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

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



(b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under 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, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.210 Governing Law

2.211 Governing Law

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



2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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

The Contractor's liability for damages to the State is limited to the value of the Contract. The foregoing limitation of liability does 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 is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

If any Proceeding disclosed to the State under 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:

- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this



Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
- (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor must make the following notifications in writing:
 - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB Purchase Operations within 30 days whenever changes to company affiliations occur.

2.232 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 is a material breach of this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreement (SLA)

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



- (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
- (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
- (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - (i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

RESERVED

2.244 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected



Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

2.250 Approval of Deliverables

2.251 Delivery of Deliverables

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 is attached, if applicable. 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.

2.252 Contractor System Testing

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

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

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



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

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

2.253 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 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 this Section.

The Deliverable will be approved in writing 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**.

2.254 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.

2.255 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 an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, 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 this **Section** 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**.

2.256 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.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables, as they are work made for hire by the Contractor for the State.

2.262 Vesting of Rights

Reserved

2.263 Rights in Data

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

2.264 Ownership of Materials

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



2.270 State Standards

2.271 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MiDEAL (Michigan Delivery Extended Agreements Locally)

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: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices will be submitted to and pay 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.

In those cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. The Bidder must submit invoices and pay the authorized MIDEAL member on a direct and individual basis according to contract terms.

IT IS MANDATORY THAT ALL CONTRACTS RESULTING FROM THIS RFP WILL BE MADE AVAILABLE TO ALL STATE OF MICHIGAN AGENCIES AND AUTHORIZED MIDEAL PURCHASING PROGRAM MEMBERS.

Please Visit Mi DEAL at www.michigan.gov/buymichiganfirst under MiDeal.

Estimated requirements for authorized local units of government are not included in the quantities shown in this RFP.

2.282 State Employee Purchases

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



The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the State employee on a direct and individual basis.

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

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy: The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy: The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials: For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, 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 the 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.

- (a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about 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 must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.



- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any 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 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 must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Labeling: Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning: The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

Environmental Performance: Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Deliverables

2.301 Software

If applicable, a list of the items of software the State is required to purchase for execution the Contract is attached. The list 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). The attachment also identifies certain items of software to be provided by the State.

2.302 Hardware

A list of the items of hardware the State is required to purchase for execution the Contract is attached. The list 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). The attachment also identifies certain items of hardware to be provided by the State.

2.303 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.

2.304 Equipment to be New and 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 2.024**.

2.310 Software Warranties

2.311 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 (90) ninety days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

2.312 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.

2.313 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.



2.314 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.

2.315 Physical Media Warranty

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

2.320 Software Licensing

2.321 Cross-License, Deliverables Only, License to Contractor

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

2.322 Cross-License, Deliverables and Derivative Work, License to Contractor

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

2.323 License Back to the State

RESERVED

2.324 License Retained by Contractor

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 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.

2.325 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.

2.330 Source Code Escrow

2.331 Definition

“Source Code Escrow Package” shall mean:

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

2.332 Delivery of Source Code into Escrow

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

2.333 Delivery of New Source Code into Escrow

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

2.334 Verification

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

2.335 Escrow Fees

The Contractor will pay all fees and expenses charged by the Escrow Agent.

2.336 Release Events

The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:

- (a) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
- (b) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;



- (c) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

2.337 Release Event Procedures

If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in this **Section**, then:

- (a) The State shall comply with all procedures in the Escrow Contract;
- (b) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
- (c) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.

2.338 License

Upon release from the Escrow Agent pursuant to an event described in this **Section**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

2.339 Derivative Works

Unless otherwise required by law, all intellectual property developed using funds from this agreement, including copyright, patent, trademark, and trade secret, shall belong to the contractor.



Project Plan

Ongoing (Daily/Monthly Activities) – Maintenance

PM = project manager, SA=system architect, CS= Content Specialist

Activity	Key person	Reported/evaluated
Maintain link integrity and correct/update links	CS, SA	Reflected in quarterly report
Maintain relationship with virtual hosting provider	SA	
Instant feedback is available on every page that goes directly to REACH staff upon submission. We will also add a central feedback management area where feedback submitted around the website can be analyzed and sorted for patterns.	SA, CS	
Make time sensitive updates to E-Learn content according to emerging MRS policy, State and Federal regulations at request of MRS staff members	CS, SA	
Maintain course facilitation for current E-Learn courses. Follow up / initiate contact with learners on course work (this includes encouraging collaboration among learners, feedback, responding to questions, promoting discussion and supporting application of information in course. In the Ethics courses, this also includes extensive written feedback and discussion with learners on their scenario summaries and analyses.	CS	
Maintain and manage CRC credits and OLC that includes reporting on which OLC courses generate greatest response and completion rates from users. Ensure that all CRC requirements have been met, then update CRC records for annual submission	CS	Reflected in quarterly report; reported to the CRC liaison annually.
Hold focus groups for improvement to E-Learn?	SA, CS	Reflected in quarterly report
Provide technical support for all MRS users?	SA	
Provide in-depth technical support for all Staff Development Unit members?	SA	



Ongoing (Daily/Monthly Activities) – Maintenance

PM = project manager, SA=system architect, CS= Content Specialist

Activity	Key person	Reported/evaluated
Establish and maintain a relationship with Staff Development Unit in formulating and implementing new content regarding MRS’s three content areas: Core, Specialty and Enhancement Skills, and in marketing E-Learn services and features	PM, SA, CS	Reflected in quarterly report
Make requested revisions/enhancements, as permitted by funding of REACH personnel and in a timely fashion through out the contract period based on requests submitted by designated MRS staff	PM, SA, CS	
Maintain user database, provide support and problem solve any access issues	SA	
Maintain continuous review and time-sensitive updates to ADA and Transition courses and E-Learn information sources, including incorporation of new legislation, court decisions, and other updates according to emerging MRS policy, State and Federal regulations.	CS	

Quarterly Activities - Maintenance

PM = project manager, SA=system architect, CS= Content Specialist

Activity	Key person	Reported/evaluated
1. Maintain a data statistical system to E-Learn which includes: <ul style="list-style-type: none"> a. OLC courses that generate greatest response and completion rates from users b. Analyze and report on usage c. Including evaluation in a quarterly report d. Hits to the E-Learn website, and session activity grouped by users e. Relative importance of various E-Learn pages f. Number of unique visitors 	SA and CS	Reported quarterly to MRS

Annual Activities – Maintenance

PM = project manager, SA=system architect, CS= Content Specialist

Activity	Key person	Reported/evaluated
Update SSA Information, including Fast Facts, jobs aids, and other resources – completed in November-December	CS	Reported quarterly to MRS
Summary report of E-Learn and OLC activity to MRS – completed at the end of September		Annual report combined with the 4 th quarter report
Based on available funding, support blended learning events by hosting online readiness and post application activities and create supplemental materials that may include quizzes, scenarios, power point summaries, etc.	CS, SA, PM	Reported in the quarter in which work occurs



Timeline for New Development

PM = project manager, SA=system architect, CS= Content Specialist

Year 1	Year 2	Year 3	Year 4	Year 5
Improve utilization functionality and develop new features for the Search function, including upgrade of core Venexus search software and further utilization of most-helpful-results patterns. SA	Continue to enhance features of the site Search SA	Continue to enhance features of the site Search SA	Continue to enhance features of the site Search SA	Continue to enhance features of the site Search SA
Review and update system accessibility SA		Review and update system accessibility SA		Review and update system accessibility SA
Enhance federal reporting capacity on events SA	Enhance federal reporting capacity on events SA			
	Update platform consistent with DotNetNuke updates	Incorporate additional DotNetNuke innovations in keeping with MRS requests	Incorporate additional DotNetNuke innovations in keeping with MRS requests	Incorporate additional DotNetNuke innovations in keeping with MRS requests
	Continue enhancements to the events center	Continue enhancements to the events center	Integrate event center activities with user profile	Add automated event related communication abilities



Timeline for New Development

PM = project manager, SA=system architect, CS= Content Specialist

Year 1	Year 2	Year 3	Year 4	Year 5
	Begin to integrate digital media (auditory and visual) into traditional content in high impact areas of E-Learn, beginning with one Fast Facts PM/SA/CS	Expand integration of digital media (auditory and visual) into traditional content in high impact areas of E-Learn, beginning with one Fast Facts selected by MRSPM/SA/CS	Expand integration of digital media (auditory and visual) into traditional content in high impact areas of E-Learn, beginning with one Fast Facts or other area selected by MRSPM/SA/CS	Expand integration of digital media (auditory and visual) into traditional content in high impact areas of E-Learn, beginning with one Fast Facts or other area selected by MRSPM/SA/CS
Move one OLC Classic course to the E-Learn environment CS/SA	Move one OLC Classic course to the E-Learn environment CS/SA	Move one OLC Classic course to the E-Learn environment CS/SA	Move one OLC Classic course to the E-Learn environment CS/SA	Move one OLC Classic course to the E-Learn environment CS/SA
Create three new one-hour courses in collaboration with MRS staff that include at least one of the following: audio clip(s), video clip(s), and ob aid(s), discussion, and / or quiz functions. – emphasis on “core skills” CS/PM	Create three new one hour courses in collaboration with MRS staff that include at least one of the following: audio clip(s), video clip(s), job aid(s), discussion, and / or quiz functions – emphasis on core skills and/or specialty skills CS/PM	Create three new one hour courses in collaboration with MRS staff that include at least one of the following: audio clip(s), video clip(s), job aid(s), discussion, and / or quiz functions – emphasis on core skills and/or enhancement skills CS/PM	Create three new one hour courses in collaboration with MRS staff that include at least one of the following: audio clip(s), video clip(s), job aid(s), discussion, and / or quiz functions – emphasis on core skills, specialty, and/or enhancement skills CS/PM	Create three new one hour courses in collaboration with MRS staff that include at least one of the following: audio clip(s), video clip(s), job aid(s), discussion, and / or quiz functions – emphasis on core skills, specialty, and/or enhancement skills CS/PM



Timeline for New Development

PM = project manager, SA=system architect, CS= Content Specialist

Year 1	Year 2	Year 3	Year 4	Year 5
	Update and enhance video orientation		Update and enhance video orientation	
	Update all Ethics courses consistent with 2010 revision of the Code of Ethics			
Provide development support to MRS identified authors for two (2) Fast Facts to include the CRC option, audio clips, video clips, job aids, discussion, and quiz functions. Topics and subject matter to be determined at later date. Counselor input will be solicited for job aids. CS, PM, SA	Provide development support to MRS identified authors for two (2) Fast Facts to include the CRC option, audio clips, video clips, job aids, discussion, and quiz functions. Topics and subject matter to be determined at later date. Counselor input will be solicited for job aids. CS, PM, SA	Provide development support to MRS identified authors for two (2) Fast Facts to include the CRC option, audio clips, video clips, job aids, discussion, and quiz functions. Topics and subject matter to be determined at later date. Counselor input will be solicited for job aids. CS, PM, SA	Provide development support to MRS identified authors for two (2) Fast Facts to include the CRC option, audio clips, video clips, job aids, discussion, and quiz functions. Topics and subject matter to be determined at later date. Counselor input will be solicited for job aids. CS, PM, SA	Provide development support to MRS identified authors for two (2) Fast Facts to include the CRC option, audio clips, video clips, job aids, discussion, and quiz functions. Topics and subject matter to be determined at later date. Counselor input will be solicited for job aids. CS, PM, SA
	Work with assigned counselors to develop up to five job aides or tools to meet counselor's expressed needs. CS, PM, SA	Work with assigned counselors to develop up to five job aides or tools to meet counselor's expressed needs. CS, PM, SA	Work with assigned counselors to develop up to five job aides or tools to meet counselor's expressed needs. CS, PM, SA	Work with assigned counselors to develop up to five job aides or tools to meet counselor's expressed needs. CS, PM, SA



Timeline for New Development

PM = project manager, SA=system architect, CS= Content Specialist

Year 1	Year 2	Year 3	Year 4	Year 5
	Work with E-Learn Champions to develop at least three job aids for common tasks that can be automated. CS, PM, SA	Work with E-Learn Champions to develop at least three job aids for common tasks that can be automated. CS, PM, SA	Work with E-Learn Champions to develop at least three job aids for common tasks that can be automated. CS, PM, SA	Work with E-Learn Champions to develop at least three job aids for common tasks that can be automated. CS, PM, SA
	Update E-Learn activity/feature evaluation with online evaluation results available to administrators SA	Further enhance E-Learn activity/feature evaluation with online evaluation results available to administrators SA		
Facilitate / assist MRS with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting. CS, SA, PM	Continue to assist with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting. CS, SA, PM	Continue to assist with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting. CS, SA, PM	Continue to assist with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting. CS, SA, PM	Continue to assist with creation of case scenarios, video clips, audio clips, and power point presentations (e.g., development of summary power point presentations that could be used in a staff meeting) which can be loaded for use in another setting. CS, SA, PM



Timeline for New Development

PM = project manager, SA=system architect, CS= Content Specialist

Year 1	Year 2	Year 3	Year 4	Year 5
	Integrate one-page instant feedback mechanism into course evaluations SA			
	Update <i>MRS Favorites</i> tool to include an automatic OLC active course marker. SA			
		Develop user learning profile areas to generate reports of OLC, other training courses taken and current progress. SA	Develop user learning profile areas further. SA	Enhance user learning profile areas to generate reports of OLC and other training courses taken and current progress. SA
		Add HTML rescan functionality to identify and flag Manual links with helpful icons. SA	Make improvements to tests and surveys function. SA	
		Incorporate strategies for adding relevant visuals that enhance learning. CS, SA, PM	Create new OLC orientation materials (PowerPoint presentations, Camtasia, and pop-up for navigation tips for first time users in a new course and for the first quiz. CS, SA, PM	Create new welcome video and downloadable course guides for courses with highest registrations. CS, SA, PM