



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 **8**

to

Contract Number **071B1300356**

CONTRACTOR	ELAVON, INC.
	7300 Chapman Hwy.
	Knoxville, TN 37920
	Beverly Baker
	502-933-8406
	beverly.baker2@elavon.com
	CV0060270

STATE	Program Manager	Andrew Boettcher	TREA
		517-636-0631	
		BoettcherA@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY

CREDIT AND DEBIT CARD PROCESSING

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 1, 2011	July 31, 2016	3 - 1 Year	January 31, 2021
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 30		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		January 31, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$93,662,929.96	\$0.00	\$93,662,929.96		

DESCRIPTION

Effective December 17, 2019 the following amendments are hereby incorporated into this contract:

- 1) American Express Public Sector (AmEx) is added to "Appendix 4: Joinder to Contract No. 071B1300356" and AmEx cards will now be processed according to this contract;
- 2) The "Appendix 7 - Addendum for American Express Public Sector Program" document is added;
- 3) The State will be notified of the most recent version of Appendix 6 - Merchant Operating Guide within 30 days of publication and it will be followed; and
- 4) The following contract term is hereby updated to:
 2.201. Nondiscrimination.
 Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of

employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

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

ADDENDUM FOR AMERICAN EXPRESS PUBLIC SECTOR PROGRAM (TPSP) – GOVERNMENT ONLY**COMPANY INFORMATION**

DBA NAME:			ELAVON MERCHANT ID (MID):		
ADDRESS 1:			CONTACT NAME:		
ADDRESS 2:			PHONE #:		
CITY:	STATE/PROVINCE:	ZIP:	COUNTRY:	CONTACT EMAIL: _____	

AMERICAN EXPRESS PUBLIC SECTOR (TPSP)

<input checked="" type="checkbox"/> CUSTOMER IS ELIGIBLE FOR AMERICAN EXPRESS PUBLIC SECTOR (TPSP) AND ACCEPTS	INDUSTRY TYPE: <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> EDUCATION <input type="checkbox"/> UTILITIES
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PRICING INFORMATION FOR AMERICAN EXPRESS PUBLIC SECTOR (TPSP) - GOVERNMENT ONLY

TIERED	RATE	PER ITEM	ENHANCED ICPLUS	RATE	PER ITEM
QUALIFIED	%	\$	QUALIFIED	%	\$
MID QUALIFIED	%	\$	MID QUALIFIED	%	\$
NON QUALIFIED	%	\$	NON QUALIFIED	%	\$
INTERCHANGE PLUS	%	\$			

COMPANY ACKNOWLEDGEMENT

This Addendum for American Express Public Sector Program amends the Terms of Service, Payment Device Processing Agreement, or Master Services Agreement, as applicable ("the "Agreement") between the entity identified above as Company ("Company") and the Elavon entity noted therein ("Elavon"), and Company agrees as follows:

1. Company represents that it is eligible for the American Express Public Sector Program ("Program") and desires to accept Transactions through the Program.
2. All Transactions accepted by Company through the Program will be governed by the terms and conditions set forth in the Chapter of the Operating Guide governing American Express Acceptance Programs (Public Sector; currently Chapter 30, located at: https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf).
3. Company will pay Elavon the fees identified above for Transactions processed through the Program. American Express Public Sector authorization and wholesale discount fees, access fees, assessments, dues and other fees and charges are passed to Company at cost.
4. Except as expressly modified above, the Agreement remains unaltered and in full force and effect.

SIGNATURE: X	PRINTED NAME:	TITLE:	DATE:
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E-MAIL TO: SBS@ELAVON.COM OR ADDEQUIPMENTSERVICE@ELAVON.COM OR **FAX TO:** 1-866-548-6824 OR 1-865-403-5693

SUBMITTED BY: TO THE BEST OF MY KNOWLEDGE, I CERTIFY THAT THE INFORMATION PROVIDED IN THIS ADDENDUM FOR AMERICAN EXPRESS PUBLIC SECTOR PROGRAM WAS PROVIDED BY THE COMPANY AND IS TRUE, COMPLETE AND ACCURATE.

REP NAME:	REP E-MAIL ADDRESS:	REP ID #:	DATE:
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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 7
 to
 Contract Number 071B1300356

CONTRACTOR	ELAVON
	7300 Chapman Hwy.
	Knoxville, TN 37920
	Beverly Baker
	502-933-8406
	beverly.baker2@elavon.com
	CV0060270

STATE	Program Manager	Andrew Boettcher	TREA
		517-636-0631	
		BoettcherA@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY

CREDIT AND DEBIT CARD PROCESSING

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 1, 2011	July 31, 2016	3 - 1 Year	July 31, 2019

PAYMENT TERMS	DELIVERY TIMEFRAME
NET 30	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>	18 Months	January 31, 2021

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$69,900,033.00	\$23,762,896.96	\$93,662,929.96

DESCRIPTION

Effective July 17, 2019, this Contract is extended 18 months, and is increased by \$23,762,896.96. The revised contract expiration date is January 31, 2021.

All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on July 16, 2019.



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 **071B1300356**

CONTRACTOR	ELAVON
	7300 Chapman Hwy.
	Knoxville, TN 37920
	Beverly Baker
	502-933-8406
	beverly.baker2@elavon.com
	CV0060270

STATE	Program Manager	Andrew Boettcher	TREA
		517-636-0631	
		BoettcherA@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY

CREDIT AND DEBIT CARD PROCESSING

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
August 1, 2011	July 31, 2016	3 - 1 Year	July 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$61,400,033.00	\$8,500,000.00	\$69,900,033.00		

DESCRIPTION

Effective date, this contract is hereby increased by \$8,500,000.00.

Please note the Contract Administrator has been changed to Joy Nakfoor (nakfoorj@michigan.gov, 517-249-0481).

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on February 5, 2019.

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. 5
 to
 CONTRACT NO. 071B1300356
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Elavon, Inc. 7300 Chapman Hwy. Knoxville TN, 37920	Beverly Baker	Beverly.Baker2@elavon.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(502) 933-8406	*****6822

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	TREA	Andrew Boettcher	(517) 636-0631	BoettcherA@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Credit And Debit Card Processing - Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2011	July 31, 2016	3 - 1 Year	July 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30		FOB Destination	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input 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 checked="" type="checkbox"/>	3 Years	<input type="checkbox"/>		July 31, 2019
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$30,950,033.00		\$ 30,450,000.00	align="center">\$61,400,033.00	

DESCRIPTION: Effective May 18, 2016, this Contract is exercising the three-one year option years and is increased by \$30,450,000.00. The revised contract expiration date is July 31, 2019. Additionally, Attachment A Pricing is hereby revised to reflect below pricing. Furthermore, the Contractor's primary contact has changed to Beverly Baker. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on May 17, 2016.

TSYS only MIDs based on settlement			
Tran Type	Transaction Range	Unit	
MasterCard/Visa	4,500,001 - 5,000,000	\$0.0452	currently at today
	5,000,001 - 5,700,000	\$0.0427	
	5,700,001 - 6,350,000	\$0.0402	
	6,350,001 - 6,900,000	\$0.0377	
Discover	100,000 - 200,000	\$0.0577	currently at today
	200,001 - 300,000	\$0.0502	
	300,001 - 400,000	\$0.0452	
Elavon Only or TSYS/Elavon Combination MIDs based on settlement			
Tran Type	Transaction Range	Unit	
MasterCard/Visa	4,500,001 - 5,000,000	\$0.0325	currently at today
	5,000,001 - 5,700,000	\$0.0300	
	5,700,001 - 6,350,000	\$0.0275	
	6,350,001 - 6,900,000	\$0.0250	
Discover	100,000 - 200,000	\$0.0450	currently at today
	200,001 - 300,000	\$0.0375	
	300,001 - 400,000	\$0.0325	

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. 071B1300356
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Elavon, Inc. 7300 Chapman Hwy. Knoxville TN, 37920	Paul Gurtner	paul.gurtner@elavon.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	800-725-1244 x- 5539	*****6822

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	Treasury	Andrew Boettcher	517-636-0631	BoettcherA@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Credit And Debit Card Processing – Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2011	July 31, 2016	3 - 1 Year	July 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		Click here to enter a date.
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$30,950,033.00		\$ 0.00	\$30,950,033.00	

DESCRIPTION: Effective April 12, 2016 Elavon's Converge with Tokenization product is hereby added to the contract for the use by the Department of Health and Human Services.

Attachment A (Pricing) is hereby amended to add new transaction fees for Converge with Tokenization as follows:

- \$150/MID one-time setup fee
- \$20/month/MID Maintenance Fee
- Contractual Elavon processing fee
- Tokenization \$0.05/settled transaction.

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

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. 071B1300356
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Elavon, Inc. 7300 Chapman Hwy. Knoxville TN, 37920	Paul Gurtner	Paul.gurtner@elavon.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	800-725-1244 x- 5539	*****6822

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	Treasury	Andrew Boettcher	517-636-0631	BoettcherA@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Credit And Debit Card Processing Services – Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2011	July 31, 2016	3 - 1 Year	July 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input 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 type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$30,950,033.00		\$ 0.00	\$30,950,033.00	

DESCRIPTION:
 Effective December 16, 2015 the Program Manager/CCI has been changed to Andrew Boettcher.

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

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. 2
 to
CONTRACT NO. 071B1300356
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Elavon, Inc. 7300 Chapman Highway Knoxville, TN 37920	Paul Gurtner	Paul.gurtner@elavon.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	800-725-1244 ex. 5539	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	TREAS	Brenda Lindsay	517-69-5382	Lindsayb2@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Credit and Debit Card Processing Services-Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2011	July 31, 2016	3-one year	July 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input 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 type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$30,950,033.00	\$0.00	\$30,950,033.00		

DESCRIPTION: Please note the Program Manger / CCI has been changed to Brenda Lindsay and the Contract Administrator / Buyer has changed to Brandon Samuel per section 2.023.

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

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET October 11, 2011
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300356
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Elavon, Inc. 7300 Chapman Highway Knoxville, TN 37920 <p style="text-align: right;">paul.gurtner@elavon.com</p>	TELEPHONE 800-725-1244 x.5539 Paul Gurtner
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Tom Sharpe (517) 636-5400 <p style="text-align: center;">Credit and Debit Card Processing Services – Statewide</p>	
CONTRACT PERIOD: From: August 1, 2011 To: July 31, 2016	
TERMS <p style="text-align: center;">NET 30</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>	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT THROUGH MiDEAL.

NATURE OF CHANGE(S):

Effective September 1, 2011, Attachment A (Pricing-Tables 1 and 2) is hereby revised to reflect new transaction fees (reduced TSYS rates), and optional Elavon direct transaction pricing (see attached).

All other terms, conditions, and specifications remain unchanged.

AUTHORITY/REASON:

Per Contractor/agency agreement and DTMB/Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$30,950,033.00 (inclusive of Interchange)



September 21, 2011

State of Michigan
 Amy Kelso
 CEPAS/Credit Card Program Manager
 30 West Allegan
 Lansing, MI 48922

IMPORTANT: TSYS Pricing Information

Dear Amy:

Based upon a new Elavon and TSYS agreement, Elavon is pleased to offer the pass-through rate for the new Major Merchant TSYS pricing. The Major Merchant rate will be \$0.0327 and effective for September 2011. The new TSYS rate has been incorporated in the Unit Rate in the below table. Additionally, Elavon's rates are incorporated in the below table as well.

All Visa, MasterCard, Discover and debit network authorization and Interchange fees, assessments, dues and other fees and charges are passed to Merchant at cost. Servicer Transaction processing fees include included in the below table.

Excerpt taken in part from Contract No. 071B1300356 Attachment A Pricing (page 66+)

Table 1 - Transaction Fees - Visa/MasterCard				
Transaction Fees	Range of Transactions	Unit Rate	X Estimated Annual Volume	Total Estimated Cost
Visa/MasterCard	1,500,000 - 2,000,000	\$0.0677	2,000,000	\$164,800.00
	2,000,001 - 2,500,000	\$0.0627	2,250,000	\$174,150.00
*The unit rate includes the increased TSYS fee of \$0.0474	2,500,001 - 3,000,000	\$0.0577	2,500,000	\$181,000.00
minus the 50.0474 plus the new rate \$0.0327	3,000,001 - 3,500,000	\$0.0527	2,750,000	\$185,350.00
\$0.0327	3,500,001 - 4,000,000	\$0.0502	3,000,000	\$194,700.00
	4,000,001 - 4,500,000	\$0.0477	3,250,000	\$202,800.00
	4,500,001 - 5,000,000	\$0.0452	3,500,000	\$209,650.00
Total Volume and costs for all ranges		\$0.4870	19,250,000	\$1,312,450.00

Elavon
 7300 Chapman Highway
 Knoxville, TN 37920

Table 2 - Transaction Fees – Discover				
Transaction Fees	Range of Transactions	Unit Rate	X Estimated Annual Volume	Total Estimated Cost
Discover	0 - 100,000	\$0.0677	100,000	\$8,240.00
*The unit rate includes the increased TSYS fee of \$0.0474	100,001 - 200,000	\$0.0577	200,000	\$14,480.00
minus the \$0.0474 plus the new rate \$0.0327	200,001 - 300,000	\$0.0502	300,000	\$19,470.00
\$0.0327	300,001 - 400,000	\$0.0452	400,000	\$23,960.00
Total Volume and costs for all ranges.		\$0.2800	1,000,000	\$66,150.00

Table 3 - Equipment/Software				
Equipment/Software	Estimated Number of Equipment/Software	Unit Rate	X Estimated Contract Use	Total Estimated Cost
Hypercom 4210 (dial)	100	\$338.00	100	\$33,800.00
Total Volume and cost for all commodities		\$338.00	100	\$33,800.00

Please let me know if you should have any questions or if I can assist further at any time.

Sincerely,

Jan LaRue, Client Executive

Toll 1.800.725.1244 ext 5314 | Direct 865.689.9389 | Email jan.larue@elavon.com

Elavon
7300 Chapman Highway
Knoxville, TN 37920



September 21, 2011

State of Michigan
Amy Kelso
CEPAS/Credit Card Program Manager
30 West Allegan
Lancing, MI 48922

IMPORTANT: Elavon Direct Authorization and Settlement

Dear Amy:

As a follow-up to a discussion that we have had in the past, Elavon wanted to share with you the cost for processing transactions directly with Elavon, in lieu of sending authorizations through the TSYS network.

The rates below do not include Interchange, Assessments or Card Association fees. These fees will be passed through with no increase to the State as indicated in the existing agreement.

Excerpt taken in part from Contract No. 071B1300356 Attachment A Pricing (page 66+)

Table 1 - Transaction Fees - Visa/MasterCard		
Transaction Fees	Range of Transactions	*Elavon Direct Unit Rate
Visa/MasterCard	1,500,000 - 2,000,000	\$0.0550
	2,000,001 - 2,500,000	\$0.0500
*The unit rate includes \$0.02 dial-up Elavon fee	2,500,001 - 3,000,000	\$0.0450
	3,000,001 - 3,500,000	\$0.0400
	3,500,001 - 4,000,000	\$0.0375
	4,000,001 - 4,500,000	\$0.0350
	4,500,001 - 5,000,000	\$0.0325
Total Volume and costs for all ranges		\$0.0421

Table 2 - Transaction Fees - Discover		
Transaction Fees	Range of Transactions	*Elavon Direct Unit Rate
Discover	0 - 100,000	\$0.0550
	100,001 - 200,000	\$0.0450
*The unit rate includes \$0.02 dial-up Elavon fee	200,001 - 300,000	\$0.0375
	300,001 - 400,000	\$0.0325
Total Volume and costs for all ranges.		\$0.0425

Table 3 - Equipment/Software		
Equipment/Software	Estimated Number of Equipment/Software	Unit Rate
Hypercom 4210 (dial)	100	\$338.00

Please let me know if you should have any questions or if I can assist further at any time.

Sincerely,
Jan LaRue, Client Executive

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

August 3, 2011

NOTICE
TO
CONTRACT NO. 071B1300356
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Elavon, Inc. 7300 Chapman Highway Knoxville, TN 37920 <p style="text-align: right;">paul.gurtner@elavon.com</p>	TELEPHONE 800-725-1244 x.5539 Paul Gurtner
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Tom Sharpe (517) 636-5400 <p style="text-align: center;">Credit and Debit Card Processing Services – Statewide</p>	
CONTRACT PERIOD: From: August 1, 2011 To: July 31, 2016	
TERMS <p style="text-align: center;">NET 30</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>	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT THROUGH MiDEAL.

The terms and conditions of this Contract are those of RFP #07110200029, this Contract Agreement and the vendor's proposal. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those outlined in this Contract take precedence.

Total Estimated Contract Value: \$30,950,033.00 (inclusive of Interchange)

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
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MISCELLANEOUS INFORMATION:	
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FOR THE CONTRACTOR: <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Elavon, Inc. Firm Name </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Authorized Agent Signature </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Authorized Agent (Print or Type) </div> <div style="text-align: center; border-bottom: 1px solid black;"> Date </div>	FOR THE STATE: <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Signature Natalie Spaniolo, Acting Director </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Name/Title Business Services Administration </div> <div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;"> Division </div> <div style="text-align: center; border-bottom: 1px solid black;"> Date </div>
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STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B1300356
Credit and Debit Card Processing Services

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



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Attachments:

Attachment A, Pricing

Exhibits:

	<u>Reference</u>	<u>Subject</u>
1.	1.022.1.B	Estimated Annual Sales and Equipment Information by Department
2.	1.032	Receipts Processing Division Organization Chart
3.	1.041.2	Estimated Conversion Schedule
4.	1.012	CEPAS Brochure
5.	1.022.6.N	Form 4621, What is an Incident? (brochure)

Appendices:

1. Payment Device Processing Agreement (Merchant Agreement)
2. Processing Services for Government Entities and Institutions (Schedule I)
3. Service Level Agreement (Exhibit 1 to Payment Device Processing Agreement)
4. Joinder Agreement
5. Mutual Non-Disclosure Agreement
6. Merchant Operating Guide



DEFINITIONS

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

ACH means Automated Clearing House.

Acquirer means a licensed card association member that acquires data relating to a transaction from the card acceptor or Merchant and submits that data for authorization and settlement, either directly or indirectly to a processor.

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Assessment Rates mean part of the overall pricing structure. Rates are assessed by Discover, Visa, and MasterCard, and represent income to Discover, VISA, and MasterCard.

Association means a region or group of Merchants established by a Department.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Authorization means electronic message sent by a Merchant to the processor which asks if the Credit Card presented is valid and can accept the charge.

Authorization Rates mean rates assessed to the Acquirer for an authorization from the processor for individual authorization requests.

Automated Response Unit means Voice Response Unit.

Bidder(s) are those companies that submit a proposal in response to the RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

CEPAS means the Centralized Electronic Payment Authorization System (CEPAS). CEPAS is an enterprise-wide payment solution administered by First Data Government Solutions (FDGS).

Credit Card means a plastic card in which the Issuer (financial institution) establishes a revolving line of credit for its cardholder.

Days means calendar days unless otherwise specified.

DCH means the Michigan Department of Community Health.

DDA means Demand Deposit Account.

Debit Card means a plastic card used to initiate a debit transaction. In general these transactions are used primarily to purchase goods and services and to obtain cash, for which the cardholder's bank account is debited by the card Issuer.

Deleted – N/A means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.



Deliverable means physical goods and/or services required or identified in a Statement of Work.

Department means agencies that make up State of Michigan government, such as Department of Treasury or Department of State.

DEQ means the Michigan Department of Environmental Quality.

DHS means the Michigan Department of Human Services.

DNR means the Michigan Department of Natural Resources.

DOS means the Michigan Department of State.

DTMB means the Michigan Department of Technology, Management and Budget.

Electronic Card Terminals means Devices used by the Merchant to capture the necessary electronic data necessary for the authorization process. Can be used with or without a printer.

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

FDGS means First Data Government Solutions.

GLBA means Gramm Leach Bliley Act.

HAL means the Michigan Department of History, Arts, and Libraries.

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

Incident means any interruption in Services.

Interchange Fee means a fee applied to a card transaction; applicable to the members participating in the transaction as Issuer and Acquirer. The applicable interchange fee is determined by the authorization method, settlement period, and data in the authorization/settlement record.

Interchange Pricing Plus means a pricing plan which passes on fees (interchange) established by the Credit Card companies at cost and negotiates fees that are controlled by the Acquirer.

Issuer means bank or lending institution that issues a Credit/Debit Card under a licensing agreement from a Credit Card company such as VISA or MasterCard.

IVR means an Interactive Voice Response software application that accepts a combination of voice telephone input and touch-tone keypad selection and provides appropriate responses back to the caller.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

LARA – means License and Regulatory Affairs (previously DELEG – Dept. of Energy and Economic Growth).

Merchant means a Department program that accepts Credit/Debit Cards for payment.

MID means Merchant Identification.



New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Off-Line Debit means a Debit Card processed like a Credit Card. These transactions settle through the Credit Card associations.

On-Line Debit means Debit Card processed by customer entering their PIN number. These transactions settle through the debit networks.

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

Payment Network has the definition assigned in Appendix 1, Section (B)(59).

Payment Network Regulations has the definition assigned in Appendix 1, Section (B)(60).

PCI DSS means Payment Card Industry Data Security Standards.

PIN means a Personal Identification Number. This is a four-digit number selected by the consumer or assigned by the institution used to authorize a debit transaction.

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

Processor means a company that settles card activity to the appropriate card association (e.g. Vital Payment Services).

POS means point of sale.

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

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

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

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

Role Based Security means security system that grants and restricts access using unique ids and passwords. Users are set up for access to only the portion(s) of the system they are going to use. Example-one person may be able to enter a sale transaction, while others may only have access to enter refunds.

SEM means Systems Engineering Methodology.



Services means the payment device processing services performed by Contractor for the benefit of the State.

SLA means Service Level Agreement.

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

State means State of Michigan.

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

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role or third party vendors used by Contractor for all merchants using that service.

SUITE means State Unified Information Technology Environment. It is a standardized methodology for project and systems development based on standardized and repeatable practices.

Transaction Fee means established by the Acquirer and is a part of Interchange Pricing Plus. Represents Acquirer costs and profit margin. This is a negotiable fee.

Treasury means the Michigan Department of Treasury.

Verisign means company that provides secure card transactions via the Internet.

VRU means Voice Response Unit. VRU is the building block of any voice processing system, essentially a voice computer. Instead of a computer keyboard for entering information (commands), a VRU uses remote touch-tone telephones. Instead of a screen for showing the results, a VRU uses synthesized voice to "read" the information to the caller.

Waste Prevention means source reduction and reuse, but not recycling.

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The Contract purpose is to provide statewide processing for Credit and Debit Cards (on-line and off-line). All State Departments can utilize this Contract, with authorization from the Department of Treasury.

This is a unit price contract, based on transaction profile and volume.

1.012 Background

The State utilizes a statewide contract for Credit and Debit Card processing (includes Visa, MasterCard and Discover acceptance and settlement). Approximately 14 Departments currently utilize this statewide Contract for processing Credit Cards. In fiscal year 2008 (October 1, 2007 through September 30, 2008), State applications processed 2.6 million transactions totaling \$209 million in revenue for State entities (does not include local government entities). These Departments use various methods for processing including Web, IVR, Electronic Card Terminals, Kiosk, and a remittance processor. The Merchant applications use TSYS Acquiring Solutions (formerly Vital Payment Services) through First Data Government Services (FDGS). Contractors must provide a solution that integrates with TSYS Acquiring Solutions.

Data security is a critical factor in credit card processing for the State. The State uses CEPAS (see Exhibit 4). CEPAS is an Internet based system provided by FDGS and utilizes TSYS Acquiring Solutions. CEPAS provides secure storage of all financial data. At this time, Electronic Card Terminals are not processed through CEPAS.

The majority of State applications use Bank of America for its card related depository accounts. Banking services are not a part of this Contract.

1.020 Scope of Work and Deliverables

1.021 In Scope

It is the intent of Treasury to continue to allow payments by Credit or Debit Card. Treasury will limit the use of Credit Cards to Visa, MasterCard, Discover and Debit Cards (off-line and on-line). This Contract includes the processing of all of these cards. Each State Department reserves the right to select the cards that they wish to accept for payment of fees or services. The State reserves the right to contract with other vendors where a complete package of financial data including credit or debit card processing will be provided for certain projects, which are contracted by the State.

Use of Debit/Credit Cards will include locations in Lansing and throughout the state of Michigan. Currently, the State has 392 Merchant accounts. Approximately 100 locations use Electronic Card Terminals (Hypercom). Other locations will use CEPAS via Web, IVR, Kiosk, manual entry, POS Systems, and a remittance processor.

1.022 Work and Deliverable

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

Note: Debit Card transactions require the use of a separate PIN. Currently, use is restricted to card-present transactions and requires the use of a PIN-pad to complete or authorize the transaction. Unless otherwise stated, further use of the term "Credit Card" refers to both Debit and Credit Cards.

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



1. Equipment & Processing

- A. **Electronic Card Terminal:** Contractor has developed numerous strategic partnerships that allow the State to use, in most cases, the POS solution that they have chosen as their processing tool. This involves POS terminal vendors such as Hypercom and VeriFone.

Contractor will support the State's existing terminals. If the State determines the need to upgrade to another type of terminal, Contractor's Client Executive, Paul Gurtner will work with the State on the available options from Contractor's line of terminals they sell and support on the TSYS Network.

- B. **Equipment:** Some Departments are currently using Electronic Card Terminals (swipe). Terminals refer to the actual authorization terminal, accompanying printer, and pinpad where needed.

(1) Deleted – N/A.

(2) Terminals must be programmed to settle automatically (auto close functionality) as long as POS solution allows (see Exhibit 1, Estimated Annual Sales, and Equipment Information by Department).

(3) Contractor must have an adequate amount of lines to perform terminal downloads/programming in an acceptable amount of time, so State business is not disrupted.

The speed of download depends on the modem download speed of the terminal, as well as the quality of the analog transmission line. For older terminals such as the Omni 3200SE and Hypercom T7Plus, these terminals require at least 30-40 minutes due to the speed of their download capabilities and it is not possible to commit to the completion of the full download of an application within the 20 minute timeframe. Both Elavon and TSYS (Visanet) applications take approximately the same amount of time. IP network downloads may achieve the 20 minute window, as long as firewall and download lines are configured correctly by the State.

Contractor will work to perform the downloading/programming in a timely manner; however, due to the various parameters involved, Contractor cannot commit to a 20 minutes or less timeframe. Contractor will work with the State in scheduling the times for programming/downloads in an effort to not disrupt business.

(4) Contractor must provide additional Electronic Card Terminals and software copies as needed by each Department. Equipment and software may be purchased through the Contractor on a unit-price basis.

(a) Price must include standard installation and 24-hour, 7-day a week support for the solution.

(b) The State must have the option of purchasing equipment and software from alternate sources as long as the equipment and/or software is compatible with the TSYS Acquiring network. Before purchasing equipment and/or software from another source, the State must check with Contractor's Client Relations Team to determine compatibility.

(c) The Contractor must program equipment purchased through them or from alternate sources within one business day at no cost to the State (except for shipping and third party costs); however, Contractor cannot commit to one business day programming 100% of the time due to various parameters outside their control.

(d) All purchases of terminals and/or software must be submitted to the Contractor from Treasury (also see section 1.061.4.C).



- (5) The State owns all equipment in place at the Merchant locations.
- (a) In the case of equipment failure, the Contractor must replace new and existing equipment for same or similar equipment make/model, within one business day.

Barring any shipper delays or problems within the TSYS network out of Contractor's control, 99% of swaps will arrive within one business day of request (request must be received by Contractor's deployment center by 3:00 P.M. all time zones).

- (b) Replacement equipment must be provided via next day delivery. The State uses Hypercom equipment and has Hypercom T7P's and Hypercom T7P Plus' deployed.

As replacements are needed, Contractor will work with the State to supply equipment equal in service; however, additional expense may apply to purchase replacement equipment when the equipment is found to be faulty and is no longer available to be swapped. The State will also incur the expense of having the equipment shipped overnight.

A charge of \$35.00 for shipping and handling fees is assessed to the replacement of faulty POS devices for overnight replacement.

- (c) The services described in this requirement must be provided at no cost to the State, unless a terminal upgrade is required due to outdated or no longer manufactured equipment. Additionally, for same terminal replacements the expense of the equipment will be covered by Contractor, whereas shipping will be the State's responsibility.

C. **Types of Charge Transactions:** The Contractor must grant Merchants the ability to process both card-present and non-card-present transactions.

D. **Telecommunications:** The Contractor is responsible for costs associated with establishing and providing secure and acceptable methods of transmitting Michigan confidential/sensitive information over telecommunication devices, for example data encryption, SSL, Public Key Infrastructure etc. (also see section 1.022.6).

- (1) The Contractor must use data encryption techniques whenever data is transmitted to and from a remote site.

All Contractor network traffic is encrypted using 128-bit SSL encryption. Any data traveling outside of the Contractor network through email is encrypted using KEY123 which in turn checks for TLS on the receiving mail server. If TLS is not present, the data is encrypted in its transmission. Additionally, for some vendors, Contractor has established a secure connection to send financial data through SFTP. Again, if TLS is established on the receiving server, additional encryption is not used. If TLS is not present, then the data is encrypted using 128-bit SSL encryption. The data exchanged between the State and TSYS Acquiring will meet with PCI required security presuming that the State's (or State-selected) software collecting the data is PCI compliant.

- (2) **Equipment Compatibility:** The Contractor is required to use compatible modem or equivalent communication equipment at all points of data transmission and reception.

- (3) **Long Distance Phone Charges:** The Contractor must have a toll free number that will be programmed into the State's terminals for communication purposes (authorization and settlement transmissions). The State will pay only its own local line fee.

E. **Supplies:** Ribbons, charge slips and carbonless paper (two copies) used for terminal printers and manual imprinters must be provided by the Contractor, and the State will bear the cost.



Contractor uses a third party provider to fulfill supply orders. The current cost for supplies is listed below. The State may also choose to purchase supplies from a different provider.

- Hypercom Ribbons \$5.95 each
- 2-part carbonless charge slips \$2.50 for a package of 100
- Manual Imprinters \$22.00 each
- Thermal paper \$2.15 per single roll or \$90.00 for a case of 48 rolls.

- F. **Customization of Charge Slips:** Where Departments choose to customize charge slips, they will be supplied by the Departments with the Contractor's approval of the basic data required for charge purposes. However, the Department reserves the right to determine the charge slip dimensions and include additional wording as required as long as the State meets the compliance requirements of the Payment Network Regulations pertaining to receipts.
- G. **New Merchant Accounts & Account Changes:** All requests for new Merchant accounts and changes to existing accounts must be initiated by Treasury. Refer to Exhibit 2 for an organization chart.
- H. **Special Events:** The Department of Human Services (DHS) holds an annual on-day auction for the Children's Trust Fund. DHS will need to have several terminals programmed and available at the auction for face-to-face card acceptance. Terminals are used the day of the event and returned to the Contractor. Contractor must provide/loan terminals for this type of event at no cost to the State with the understanding that the equipment will be returned to Contractor shortly after the completion of the event. Historically, 10 terminals are needed for this event.
- I. **Merchant Numbers:** The Contractor must assign a Merchant number for each Department program location at the discretion of the Department.
- (1) The Department must have the ability to designate sales only Merchants. (If used, the Department would process refunds in a central location or by designated Merchants.)
 - (2) Contractor will strive to meet and exceed the expectation of setting up a new account within 5 business days. However, due to various parameters out of Contractor's control, such as involvement of TSYS, Contractor will not be able to confirm commitment to 5 business days request. [Also see Exhibit 1 to Payment Device Processing Agreement, Service Level Agreement, Tier 2 Service Standards section, item 2 (Appendix 3).]
 - (3) The Contractor must not charge a fee for new Merchant accounts.
- J. **Merchant Category Code:** The Contractor must set up each State Merchant as an Emerging Market Merchant in order for the State to qualify for the Emerging Market Interchange rates. Contractor will work within the confines of the Payment Network Regulations.
- K. **Changes to Merchant Accounts:** Changes to Merchant accounts must be completed within 5 business days. However, due to various parameters out of Contractor's control, such as involvement of TSYS, Contractor will not be able to confirm commitment to 5 business day request. Changes include but are not limited to settlement account, address, contact, and Merchant name changes.
- (1) Changes to Merchant accounts must be completed at no cost to the State.
- L. **Processor:** The majority of the State Merchant applications use TSYS Acquiring Solutions through FDGS. Contractor must provide a solution that integrates with TSYS Acquiring Solutions (see section 1.012).
- M. **Discover Settlement:** The State must have the ability to settle Discover transactions with the Visa/MasterCard deposits through the Contractor.



- N. **Batch/Individual Processing:** Contractor must allow batch or individual processing. Batch processing will be used at the discretion of the Merchant. Batch transmission by Merchants may vary by the time within the day or by Merchant. The State currently has one Merchant that processes transactions in a batch. The batch is transmitted to CEPAS for processing.

Contractor offers electronic and batch processing. Files can be sent to Contractor 24x7x365.

- O. **Authorizations:** The Contractor must provide local access, U.S. Watts access, and Internet Protocol (IP) access, and allow leased line access and frame relay access.

Presently the TSYS network will allow for the use of Watts, IP, leased line, frame relay and a few other options.

- (1) Local Access: On Contractor's network a transaction can be authorized in 9 to 12 seconds using a dial-up phone line, 3 to 5 seconds using a wireless communication method or 2 to 5 seconds using an Internet communication method. Response times are the same during peak and non-peak hours.
- (2) IP with SSL Encryption, Leased Line, and Frame Relay: Contractor's average IP authorization response time is 2 to 5 seconds, however, it is not uncommon for merchants with a dedicated connection to experience sub 2 second response times. Response times are the same during peak and non-peak hours.
- (3) Local access must be available via a voice grade telephone line.

Contractor offers Asynchronous dial connectivity.

- P. **Testing:** All lines, electronic files, and equipment utilized must be properly tested by the Contractor and accepted by the State prior to using live data transactions when new applications are boarded.

- (1) The Contractor must ensure, as part of the test process, that the equipment is properly programmed and tested so transactions are reflected on the appropriate Merchant reports.
- (2) Test transactions must include, but are not limited to, authorization, refunds, settle, and reporting.

As the State is using TSYS as the front end, test transactions will be based on their test system's ability.

- Q. **Test Cards:** The Contractor must provide test cards for both Visa and MasterCard brands to be retained at Treasury for testing Department applications on an ongoing basis.

- (1) The test cards must have the ability to receive all types of transaction responses including approved, declined and settlement.

As the State is using TSYS for front end processing, Contractor will work with the State and TSYS in an effort to obtain test cards, if available from TSYS.

- (2) Test cards must have the ability to be used in face-to-face and non-face-to-face environments.

Contractor will engage TSYS in an attempt to meet this requirement.

- (3) Contractor must provide 4 Visa and 4 MasterCard cards with a limit of \$3,000 per card. The cards will be used for testing State applications. After tests are processed and settled, the State application will reverse/refund the transaction back to the card.



The current cards used by the State may continue to be used for testing. Contractor will work with the State and the Card Issuer to have 2 additional Visa and MasterCard test cards issued for a total of 4 Visa and 4 MasterCard cards.

The current test cards are production cards. Contractor will work with the State and Card Issuer to increase the card limit to \$3,000 per card.

- (4) Contractor must provide 4 Discover test cards for the State to test new applications and changes to applications.

As the State is using TSYS for front end processing, Contractor will work with the State and TSYS in an effort to obtain Discover test cards, if available from TSYS.

- (5) Contractor must also provide cards with the ability to test on-line (using PIN) debit card transactions.

As the State is using TSYS for front end processing, Contractor will work with the State and TSYS in an effort to obtain debit test cards, if available from TSYS.

- (6) Test cards must be provided at no cost (from the Contractor) to the State.

R. **Electronic Commerce:** Departments will accept electronic commerce transactions. Electronic Commerce may include but is not limited to CEPAS, IVR, Kiosks, Remittance Processor, and Internet. Contractor must be capable of accepting electronic transactions either in conjunction with a third party or directly from a Department. In some cases additional contracts may be necessary to complete Electronic Commerce functionality.

S. **Chargebacks and Retrievals:** Each Department will research and respond to chargebacks and retrievals that result from transactions processed by the Department.

- (1) The Contractor may not issue Chargebacks without Department knowledge and approval.

Chargebacks are initiated by a cardholder's card issuing bank, Contractor provides chargeback advices to notify a merchant of chargebacks occurring, and Contractor is unable to stop the issuance of chargebacks from the Payment Networks.

Contractor's normal process is to systemically debit the merchant account in event of a chargeback. However if the State would allow Contractor to pre-note the chargeback account, Contractor may receive approval from the underwriting and chargeback management to allow for a review period prior to the debit to the State's account.

Standard procedure for chargebacks is to immediately debit the disputed funds from a merchant's account when the chargeback is received by Contractor provided it passes Contractor's validation process. Some merchants have a pre-notification agreement that allows a grace period of a specific number of days before a chargeback debit is posted to the merchant's account. With a prenotification agreement, if the merchant provides their legible, valid response within the grace period to the Chargeback Pre-Notification, the debit will not be posted, therefore the merchant will not be impacted financially. If, on the other hand, the merchant does not provide a valid response or were to miss their prenotification grace period for whatever reason, causing the chargeback debit to post and a Merchant Chargeback Advice to be generated, the merchant would usually still have time to get their valid response in and receive a conditional credit before the required timeframe expires.

- (a) Chargeback notifications must be provided electronically by a secure method to each Department for review.

Contractor currently handles these activities via fax or mail. However, Contractor has reporting tools that offer the ability to view chargeback and retrieval reporting online.



Additionally, a new chargeback and retrieval online management tool is on Contractor's roadmap for release soon. This tool, OCM, will be a robust online tool for merchants to manage disputes, allowing for electronic submission of retrieval and chargeback responses and supporting queue management, workflow management, and reporting. The OCM tool operates in a secure environment. Once the OCM system is available for use, there is the option to provide e-mail notification for up to 5 users.

- (b) The Contractor must allow the Department at least 10 business days to review/research chargebacks.
- (c) The Contractor must establish a contact person dedicated to assisting departments in resolving chargeback transactions.

The State will receive support from a Client Support Specialist with additional support from a Client Executive.

- (d) Staff assigned to State Contract must be aware of the unique State Contract requirements and promptly respond within 48 hours.
- (e) The Contractor will assess a minimal fee of \$5.00 per chargeback debited to any merchant under this Contract.
- (f) Description of Chargeback and Retrieval Process: Elavon's Chargebacks that require documentation from the issuing bank are processed within an average of 10 days. Chargebacks that do not require documentation from the issuing bank are processed within an average of 5 days.

A proprietary chargeback system called ADRP (Automated Dispute Resolution Processing) is used to work chargeback and retrieval activity. ADRP is a single point of entry system housing data related to each dispute. Contractor implemented this system in 2001 and has since made several changes and enhancements to assist in the dispute process:

- Auto Decision functionality has been integrated into the system based on Payment Network Regulations for specific reason codes. This logic allows the system to determine if items should be represented to the issuing bank or debited to the merchant.
- A proprietary facsimile draft is used to fulfill copy retrieval requests whenever possible and in compliance with Payment Network Regulations to minimize the number of requests to the merchant. If the required data elements are available, and it is within the Payment Network Regulations, the request is automatically fulfilled. If original drafts are required, a request will be sent to the merchant. Any retrieval request that is not responded to by the merchant before the 25th day is auto-fulfilled with a facsimile draft. This is an attempt to protect our merchants from exposure and lower costs.
- An Auto Fax feature is built into the system allowing fax notification of a chargeback or retrieval to be sent to the merchant the same day it is received, thereby giving merchants more time to respond.
- The system generates a fifteen-day reminder notice for all outstanding retrieval requests for merchants set up with the Auto Fax feature. This notification can be changed to 5, 10, or 21 days as requested.
- Outgoing notifications are bar-coded, allowing auto-indexing to the appropriate case to occur when returned with the merchant response. This expedites the chargeback process and allows the chargeback representatives to review and work the merchant responses quicker.

- (2) Contractor must proactively monitor chargebacks on a monthly basis



- (3) Contractor must provide suggestions on ways to avoid/reduce future chargebacks.

When requested, Chargeback Department representatives work with merchants to educate them in regards to potential loss, how to prevent chargeback activity and how to spot fraudulent and/or counterfeit items. Contractor's Client Executive and Client Support Specialist can work with the State in scheduling this type of support as needed.

- (4) Contractor must assist Departments with chargeback disputes, including, but not limited to representing agency rebuttals in a timely manner and assisting Department with resolving chargebacks,

In the event of a billing dispute between a cardholder and a merchant, Elavon assists the merchant in investigating and resolving the dispute. Chargebacks are normally initiated at the issuing bank and are transmitted through the association to Elavon's merchant accounting system and Automated Dispute Resolution Processing (ADRP) system. Where possible, Payment Network Regulations based auto-decisioning logic will automatically debit the merchant or represent the chargeback as necessary.

Chargebacks that are not auto-decided by ADRP are grouped into work queues within ADRP by Payment Network reason and usage codes. For chargebacks in the queues, chargeback operations representatives determine if the required documentation is available to meet the chargeback requirements (which differ depending on the type of transaction) of the appropriate Payment Network and, if so, will represent that transaction to the issuing bank. If sufficient documentation is not available, the merchant will receive a written chargeback notice, asking it to provide the necessary documentation to support a representation.

After representation, an issuer or cardholder may continue to dispute the transaction. For Visa chargebacks, the issuing bank will submit a pre-arbitration rather than a second cycle chargeback. The incoming pre-arbitration will automatically update the appropriate case in the ADRP system and route to the appropriate queue. For MasterCard chargebacks, if the chargeback cannot be resolved during the second cycle chargeback, the transaction will be reassigned to the pre-arbitration queue.

- (a) Department rebuttals must be responded to within 5 business days.

- (5) Contractor must outline, in detail, information needed from State Departments for chargebacks and retrievals.

Contractor's Merchant Operating Guide provides instructions on what is required of a merchant for various processing environments (face-to-face, Mail-Order/Telephone-Order/Internet, etc.) to provide the best response. Additionally, the State has access to a Client Support Specialist and our Chargeback department whose representatives will provide personal assistance and convey to the State's Departments what is required to comprehensively rebuttal chargebacks.

A copy of Contractor's Merchant Operating Guide is online on Contractor's MerchantConnect Support site at:

https://www.merchantconnect.com/CWRWeb/tech_support.do (see Appendix 6).

- (6) **Chargebacks on Merchant Statements:** The Contractor must post chargebacks to the monthly Merchant statement using the Merchant number and a case number (or other identifier) which will be used to reconcile chargeback records.

Contractor provides a case number for MIDs on its monthly statement, but suppresses the MID for security purposes. Contractor's MerchantConnect Premium reporting system does provide MID detail, as well as case numbers for its chain (summary) level chargebacks reports in the chargeback section.



(a) The same number must be used on the chargeback notification. Contractor passes the MID number and the DBA name, and department #, if the department number is set up at the merchant level.

(7) **Retrievals:** Notifications must be provided electronically by a secure method to each Merchant for review.

Contractor currently handles these activities via fax or mail. However, Contractor has reporting tools that offer the ability to view chargeback and retrieval reporting online.

Additionally, a new chargeback and retrieval online management tool is on Contractor's roadmap for release soon. This tool, OCM, will be a robust online tool for merchants to manage disputes, allowing for electronic submission of retrieval and chargeback responses and supporting queue management, workflow management, and reporting.

(a) The Contractor must allow the Department at least 10 business days to review/research retrieval requests as long as faxed chargeback requests can be carried out. Timing becomes an issue if mailed chargebacks are the only delivery method available.

(b) The Contractor must not charge a fee for retrieval requests.

T. **Regulation Changes:**

Contractor will notify the State of changes that may impact the way in which the State conducts its business.

(1) Changes must be provided to the Contract Compliance Inspector or designee within a timely manner of the Contractor's receipt from Visa, MasterCard, and Discover. In many cases Contractor will need to study the new requirement to better understand how it may impact clients before distributing that data to merchants.

U. **Interchange Monitoring:** The Contractor must monitor the State's account for interchange compliance on a monthly basis to ensure the State is qualifying for the best interchange rates (also see section 1.042.1.I).

Contractor's Client Support Specialist monitors deposit volume and interchange qualification levels to ensure processing errors are quickly identified and resolved at the relationship level. Daily interchange variance data is loaded into Contractor's reporting database where client's individually or the Client Support Specialist can access interchange activity to review the qualification results and validate that the relationship is operating at the most efficient levels. Areas of interchange optimization can be readily identified.

V. **Interchange Downgrades:** The Contractor will provide the State with the tools to monitor the State's accounts for interchange downgrades on an ongoing basis. See section 1.022.1.U.

(1) Contractor offers reporting tools that will assist the State in managing Interchange reporting on a daily basis. Contractor's relationship management team will be able to review with the State the functionality of the reporting. This will allow the State to self manage the processing of credit card data in an effort to achieve the lowest interchange cost available based on the transaction processed.

(2) The Contractor and Credit Card Program Manager must agree upon a threshold for downgrades.

2. **Banking**

A. **Depository Bank Account:** The majority of State applications use Bank of America as the depository bank for card transactions.



The State reserves the right to change depository banks or utilize multiple banks. Treasury requires separate bank accounts for each Department utilizing this Contract. Treasury will provide the bank account numbers. Currently the State has 13 separate depository bank accounts. The number of bank accounts will increase as Departments are added.

Contractor will deposit funds to any DDA account that is linked via the Federal Reserve banking system.

- (1) Contractor must have the flexibility to allow the State to designate the depository account for each Merchant.

Contractor's merchant accounting system allows each merchant account to have up to three bank accounts (direct deposit accounts): one for deposits/settlements, one for billing/fees, and one for chargebacks.

- B. **Funds Availability:** The Contractor will process all transactions within 24 hours of receiving the State's processing deposits from TSYS. Liquidated Damages may be assessed for untimely deposits per section 2.243.
- C. **Deposit/Settlement Cut Time:** The Contractor must provide the ability for State Merchants to settle batches at any time throughout a day.

The TSYS Acquiring network will accept settlement files at any time with no restrictions.

- (1) Merchants with multiple deposits in a day must be combined together and paid as one deposit.

Contractor is able to consolidate settlements for individual MIDs (or a group of MIDs with the same deposit DDA in the same "chain") as long as the capture method is Terminal based, or in the event of Host-(Contractor Server) based capture, no transaction processing volume over 999 are carried out after 2:30 a.m. ET and 11 a.m. ET, which coincide with the standard HOST-settlement time for Contractor.

- (2) Cut off time for ACH to State must include deposits up to 11:45 p.m. Eastern Time received by Contractor in their processing system.
- D. **Posting Options:** Currently, most Departments receive one deposit per day, per Merchant account. Some Departments require deposits to be grouped together.

- (1) The Contractor must have the flexibility to post deposits to the State's depository accounts by Department, Merchant account, association/chain (like a region or group of Merchants) or bank account.

This is possible as long as all accounts utilize the caveat for HOST-capture defined section 1.022.2.C.1.

Options and requirements:

By Department: MIDs within the same department are grouped under the same chain and have the same DDA.

Merchant Account: Available

Association/Chain: MIDs within the same department are grouped under the same chain and have the same DDA.

Bank Account: All MIDs with similar bank accounts must be chained together in order to consolidate the settlement deposits.

All MIDs within a chain designated for consolidated deposits will be earmarked for the consolidation – it is not possible to have a chain and have a select number of MIDs to consolidate their respective funding.



- (2) The Contractor must pass identifiers in the ACH detail to indicate the Merchant number or association/chain number (like a region or group of Merchants or group of Merchants) along with an identifier describing the type of transaction (e.g. chargeback, deposit and fees).

Contractor passes DBA and MID information along with identifiers; however, it is up to the merchant's bank's systems on whether or not this information is correctly displayed.

- E. **End of Month Fees:** Fees are to be processed once a month and are not to be netted against credit receipts (also see section 1.061) unless the State is overdue by 90 days.

- (1) The fees must be processed using the same posting method as deposits (see section 1.022.2.D).

- (2) The Contractor must have the flexibility to process fees by Merchant, association/chain, (like a region or group of Merchants), Department or by bank account.

- F. **Erroneous Charges:** The Contractor will work to correct/reverse all erroneous charges processed to the State's accounts within 5 business days; however to the extent that such charges require additional research, Contractor may take up to sixty days to make such adjustments.

- G. **Chargeback ACH Detail:** The Contractor must include a Merchant number and a case number (or specific identifier) in the ACH detail for each chargeback processed to the State's depository accounts. This identifier will be used to reconcile the chargeback notification, bank statement, and the Merchant statement.

- 3. **Advertising Materials:** The Contractor must supply each Department with any advertising materials required. However, the Department will determine to what extent and the limits that such material is displayed or utilized. The display or utilization of such approved material will be in a manner complying with the Contractor's instructions and Department policy.

Contractor's Client Support Specialist and Client Executive will work with the State in obtaining the appropriate marketing materials.

- A. Advertising/marketing materials must be supplied at no cost to the State.

Contractor will provide limited supplies of marketing material free of charge to the State.

4. Customer Service

- A. **Merchants:** The Contractor must maintain a single point of contact for Merchants at the Contractor's expense to assist with chargebacks, retrieval, equipment problems, ordering supplies and general inquiries.

The State will have the support of a Client Support Specialist.

- (1) This service must be available by phone Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Time.

- (2) In addition, assistance with processing problems must be available 24 hours a day 7 days a week.

- (3) The Contractor must respond within 48 hours.

- B. **Other Contractors:** It is the responsibility of the Contractor to work with the State and other contractors (e.g., TSYS, FDGS, etc.) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, interchange downgrades, testing, etc. at no cost to the State.



- 5. Training:** The Contractor must provide appropriate and adequate training and materials to each Department when new Merchants are setup at no cost to the State.

Contractor will provide mutually agreed upon training and materials to each new Department set up.

- A. Training must include, but is not limited to, use of Electronic Card Terminals, software, and reports.

Contractor provides Merchant training services to new and existing merchants purchasing equipment or adding terminal services via telephone. These services consist of:

- Verification of equipment receipt
- Verification of deployment kit materials (cords, cables, training collateral)
- Merchant training on services (Visa, MasterCard, Electronic Gift Card, Electronic Check Services, etc.)
- Terminal Downloads on existing equipment (reprograms.)
- Terminal Downloads for adding additional services
- Terminal training on basic functions such as sales, credits, voids, forces, reports, and settlement
- Installing and training on PC Products
- Training on reporting services/websites.

- B. Training must include instructions for distinguishing between Debit and Credit Cards.

Contractor will work with the State on determining training needs for new departments and provide training within the confines of the Payment Networks.

- C. **Visa/MasterCard/Discover Regulations:** The Contractor must provide answers to general Visa/MasterCard/Discover regulation questions to Treasury when requested. The Contractor must advise the State of ongoing regulation changes per section 1.022.1.T.

6. Security

- A. The Contractor must truncate account numbers on all communications (hard copy and electronic) including, but not limited to, chargebacks, retrievals, transaction receipts (customer and Merchant) and reports.

Contractor can provide the State with truncated card numbers for transaction receipts and reports. However, Contractor receives retrieval and chargeback notices from the Payment Networks/ Issuers and these letters (notices) contain unmasked #'s. Contractor passes these letters/notices to the merchant as received (unmasked). There are currently no regulations on masking card # on chargeback notices from the issuers/associations. Contractor will continue the manual process in place for masking card data by blacking-out the middle portion of the card number on all chargeback and retrieval items leaving only the first and last four digits of the number on the chargeback and retrieval document.

- B. The Contractor must adhere to the Payment Card Industry (PCI) Data Security Standards.

- (1) Contractor agrees that they are responsible for security of cardholder data in their possession.
- (2) 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 or the Payment Network Regulations (also see section 2.093, PCI Data Security Requirements).

- C. Upon award of the Contract, the Contractor must comply with State and Federal statutory and regulatory requirements, and rules; and all other industry specific standards.



D. Governing Security Standards and Publications

Contractor must comply with the following standards and publications:

- (1) Deleted - N/A
- (2) Michigan Identity Theft Protection Act (2004 Public Act 452, as amended by Public Act 566 of 2006). A copy of the Act can be obtained on the Michigan Legislature website at www.michiganlegislature.org.

Contractor is a division of U.S. Bancorp and is required to be compliance with all federal banking laws and regulations. The law specifically addressing Information Security is the Gramm Leach Bliley Act Sec 501B (GLBA) – Safeguarding Customer information. Contractor is subject to oversight and examination for compliance with these laws and regulations by the Federal Reserve (Fed) and the Office of Comptroller of Current (OCC). Contractor also is required by the Card Networks (VISA/MasterCard/Amex/Discover) to maintain its security environment in accordance with Payment Card Industry Data Security Standards (PCI DSS). An annual security assessment and certification process is performed on the Contractor environment to ensure compliance with these data security standards.

E. Security Risk Assessment

- (1) The Contractor must conduct assessments of risks and identify the damage that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the State. Security controls must be implemented based on the potential risks.

Contractor performs an annual internal annual risk assessment process to be in compliance with GLBA. Contractor's parent company US Bancorp performs internal audit functions assessing the risks and effectiveness of Contractor's security controls. An annual SAS70 Type II audit is performed on the Contractor environment by an independent accounting firm (E&Y). A certified Quality Security Assessment (QSA) firm is engaged to perform Contractor's annual PCI DSS assessment for recertification. The Federal Reserve and OCC perform regular oversight and examinations to assess risk and confirm compliance with federal laws and regulations including those over data security.

- (2) The Contractor must ensure that reassessments occur whenever there are significant modifications to the information system and that risk assessment information is updated.
- (3) DTMB is required to follow the SEM that was governed by the SUITE. As a result of the SEM that was governed by the SUITE, a DIT-0170, *Information Technology Project Security Plan & Assessment* may be required upon the request of DTMB. It is a collaborated effort between DTMB, Treasury's Security Division (Treasury Security), and the Contractor to complete the DIT-0170. The DIT-0170 provides an overview of the security requirements for the system and a description of the security controls in place or planned for meeting those requirements. Completion of the DIT-0170, remedies of any identified issues, and approval, are required prior to implementation. This is a living document and it may be reviewed when any system/organizational changes occur and new security control requirements are implemented (e.g., laws, policies, etc.); otherwise, it should be reviewed annually. The DIT-0170 may need to be revised to address system/organizational changes or problems identified during implementation or security control assessments.

- F. **Network Security:** The Contractor is responsible for the security of and access to State data, consistent with legislative or administrative restrictions. Unsecured operating practices, which expose other connected networks to malicious security violations, are not acceptable.



- G. **Access Control:** The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise. Access must be immediately removed when a staff member changes job duties or leaves employment.

H. **Data Security**

The Contractor has the responsibility to protect the confidentiality, integrity, and availability of State data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as electronic, paper or other physical form).

Contractor will be responsible for the security of data in systems under Contractor's control. The State will be responsible for the security of data under its control, or the control of third parties with whom the State chooses to conduct business (e.g., TSYS and FDGS).

The Contractor must:

- (1) process the personal data in accordance with the personal data protection laws of the banking laws and regulations such that there is no information leakage or inappropriate disclosure of confidential or sensitive information.
- (2) have in place appropriate technical and organizational internal and security controls to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. Technical and organizational security controls must be implemented that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, presented by the processing in compliance with banking laws, regulations and PCI DSS.
- (3) provide secure and acceptable methods of transmitting personal, confidential, or sensitive information over telecommunication devices such as data encryption (128 bit minimum), Secure Socket Layer (SSL), dedicated leased line, or Virtual Private Network (VPN) in compliance with banking laws, regulations and PCI DSS.
- (4) have in place procedures so that any third party it authorizes to have access to the personal data, including processors, must respect, and maintain the confidentiality, integrity, and availability of the data.

Contractor maintains a vendor management process that assesses the risk of each vendor and if vendors have access to sensitive data the risk and their controls are accessed via this process. Contracts with these vendors are also required to contain language setting out data security expectations.

- (5) process the personal, confidential, and sensitive data only for purposes described in the Contract.
- (6) identify to the State a contact point within its organization authorized to respond to inquiries concerning processing of the personal, confidential, or sensitive data, and must cooperate in good faith with the State.

Contractor's Client Executive will be the primary contact for this type of support.

- (7) not disclose or transfer the personal, confidential, or sensitive data to a third party unless it is approved under this Contract.



The processing of credit cards requires the transfer of credit card data to the Payment Networks and Issuing banks. All other activity follows the Vendor Management risk assessment process.

- (8) not use data transferred by State agencies as a result of this Contract for any purposes outside of processing (e.g., not to disclose, sell, or use any information contained on card transactions, documents or reports furnished by State Departments in connection with this Contract).

I. **Encryption**

- (1) The Contractor is responsible for costs associated with establishing and providing secure and acceptable methods of transmitting Michigan confidential or sensitive information over telecommunication devices, for example data encryption, SSL, Public Key Infrastructure, dedicated leased line, etc.

Contractor already uses secured transmission methods and will continue to do so. The cost incurred by Contractor will continue to be covered by Contractor. Should there be any cost to the State it would be the responsibility of the State.

- (2) The Contractor must use data encryption techniques whenever data is transmitted to and from a remote site with the exception of a dedicated leased line and Electronic Card Terminals.
 - (a) Initiatives and/or Capabilities of Any Electronic Card Terminals and Services That Offer End-to-End Encryption: Contractor is in the process of assessing the use of an end-to-end encryption solution for those transactions that are processed solely within Contractor's processing network. Contractor's assigned relationship team will be able to provide the State with additional information as it becomes available. Presently Contractor is not aware of any projects that TSYS has for building an end-end encryption network.
- (3) The cipher strength must be a minimum 128-bit or better and the minimum speed must be 56,000 bytes per second (BPS).
- (4) Any electronic data containing confidential or sensitive information must be encrypted in compliance with all Banking laws and regulations as well as adhering to the PCI DSS certification requirements.
- (5) The Contractor must ensure encryption of confidential or sensitive information stored on all devices including, but not limited to, laptops, servers, workstations, and portable memory media in compliance with all Banking laws and regulations as well as adhering to the PCI DSS certification requirements. Controls are in place to limit the use of portable memory media.

- J. **Physical Security:** The Contractor must provide the physical security controls necessary to ensure controlled access to State data.

In order to safeguard the merchant and cardholder data both electronically and in hard copy, Contractor utilizes a combination of firewalls, intrusion detection systems, data loss prevention systems, data encryption, file integrity monitoring systems, access controls, patch management controls and physical security controls to ensure unauthorized users do not access systems or data.



Contractor's facility security includes: security guards at all locations; video monitoring of all entry points to the buildings and critical data centers; all door entry points are secured 24/7; access cards are required for entry; all card access to critical data rooms is approved by the SVP of Systems and Technology; all new employees go through a thorough FBI/credit report/criminal background check; all new employees are fingerprinted and photographed; all security systems have redundant back up power via Dual Utility Substation Feeds, Switchgear, UPS Batteries (uninterruptible power supplies) and Generators. Contractor also has on-site shredding of all non-retention documents. Every employee is required to go through initial Data Security training and annual refresher courses in data security and privacy procedures and practices.

(1) Physical access controls for all Contractor facilities, equipment, and applicable systems must be addressed (see section 1.022.6.J).

K. **Audit Logs:** The Contractor must (i) create, protect, and retain information system audit log records, for a minimum 5 years, to enable the monitoring, analysis, investigation, and reporting of unlawful, unauthorized, or inappropriate information system activity, and (ii) ensure that the actions of individual information system users can be uniquely traced to those users so they can be held accountable for their actions.

L. **Media Protection**

(1) The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing State of Michigan personal, confidential or sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system in accordance with all banking laws and regulations and in compliance with PCI DSS requirements.. This can include storage of information before it is input to the system and after it is output.

(2) The Contractor must ensure that only authorized users have access to information in printed form or on digital media removed from the information system, physically control and securely store information media, both paper and digital, restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel in accordance with all banking laws and regulations and in compliance with PCI DSS requirements. Users must access only systems and data that are required to perform their jobs.

M. **Media Destruction and Disposal**

(1) The Contractor must sanitize or destroy information system digital media containing personal, confidential, or sensitive information before its disposal or release for reuse to prevent unauthorized individuals from gaining access to and using information contained on the media in accordance with all banking laws and regulations and in compliance with PCI DSS requirements.

(2) The Contractor must handle the destruction of data both electronic and physical in accordance with all banking laws and regulations and in compliance with PCI DSS requirements.

N. **Incident Reporting**

(1) The Contractor must immediately notify any security incidents and/or breaches involving Personal Information of customers of the State to the Contract Compliance Inspector [as defined in Exhibit 5, Form 4621 What is an Incident? (Brochure)]. Contractor will notify the State of any security incidents or breaches that involve the State's confidential information or Personal Information of customers. Contractor will not provide notice of security incidents or breaches that affect other merchants.



- (2) The Contractor must have a documented and implemented Incident Response Policy and Procedure.
- (3) The Contractor must have an incident handling form for consistent, repeatable process for monitoring and reporting when dealing with incidents.
- (4) The Contractor must have an incident response resource identified to assist users in handling and reporting incidents.
- (5) The Contractor must have personnel trained in their incident response roles and responsibilities at least annually.

O. Disaster Recovery and Business Continuity Plan

- (1) The Contractor must have developed, periodically updated, and regularly tested disaster recovery and business continuity plans designed to ensure the availability of State data in the event of an adverse impact to the Contractor's information systems due to a natural or man-made emergency or disaster event.

Contractor also maintains a comprehensive Business Continuity and Disaster Recovery Plan (BC/DR Plan). Each of Contractor's departments maintain a BC/DR Plan that contains the procedures necessary for the resumption of normal operations. Contractor conducts yearly BC/DR recovery exercises to test the viability of continuity plans and disaster recovery configurations. Contractor's BC/DR Plans are also subject to compliance audits and internal audits to ensure that organization, best practice, and regulatory requirements are met. Contractor is subject to PCI DSS, GLBA, and the Sarbanes-Oxley Act (SOX). Elavon undergoes audits and tests from multiple agencies such as the Office of the Comptroller of the Currency (OCC). Additionally, Contractor yearly completes a full SAS 70 Type II exam.

- (2) The Contractor must provide the Contract Compliance Inspector after Contract award with a disaster recovery plan summary.
- (3) The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the Contract Compliance Inspector or designee in the form of a SSAE 16 or similar audit report within 30 days of completion of the audit report upon the State's request (with the completion of the non-disclosure agreement referenced in (4) below).
- (4) Upon contract award, the Contractor must provide the most current SSAE 16 or similar audit report.

Contractor's Client Executive will work with the State upon contract award to provide the State with a copy of the most recent SAS70 report. In order to provide a copy of the SAS 70 report, Contractor will need a signed non-disclosure agreement (Appendix 5).

P. Payment Card Industry (PCI) Security Standards Support

The Contractor must have staff experienced with PCI Security Standards in order to provide the State with guidance on the requirements.

Contractor is committed to providing Level 1, 2 and 3 merchants with support in their efforts to obtain and maintain PCI compliance. Some of the ways Contractor has worked with merchants in this effort are:

- Visa has offered Level 1 PCI training events in San Francisco for the last 2 years and these have been well attended by Contractor's Client Executives and Level 1 and 2 merchants.
- Contractor periodically holds meetings and webinars with large and/or high risk merchants.
- Attend conference calls with merchants.



- Contractor has specific communications (webinars, meetings, mailings, etc.) not only for large merchants (Level 1-3) but for high risk industry merchants and for high risk POS devices.
- Contractor sends special notices periodically to premier merchants and high risk merchants.
- Contractor encourages merchants to review the Data Security Alerts published by Visa which advise and educate merchants and third parties of particular vulnerabilities within different markets, systems and software. The alerts are published approximately once a month and are available at www.visa.com/cisp.
- Contractor's preferred partner for data security and compliance services, AmbironTrustWave, has established a website to enable Contractor merchants to begin the compliance process. Merchants can visit <https://elavon.trustkeeper.net> to validate compliance.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

1. Contractor Staff That Will Be Involved: Contractor assigns a Client Relations team to act as business advocates. The Client Relations team will conduct regular operational and strategic account reviews with the State to ensure that all expectations are met.
2. Implementation/Project Manager per section 1.041.2.

Implementation Project Leader - Should the State require Contractor to provide implementation support, the State will be assigned an Implementation Project Leader. The Implementation Project Leader will work closely with the State during the implementation period to assess processing and reporting needs and ensure that the best options are available. Should it be determined an Implementation Project Leader is required, Contractor will name this individual later in the process.

3. Merchant Single Point of Contact per section 1.022.4.A

Client Support Specialist (Dayna Emert) – Contractor's Client Support Specialist will work closely to support State staff on day-to-day issues. This individual is the primary operations contact, responsible for bringing new locations online, assisting with a review of statements and interchange status, handling chargeback issues, and providing other "back-office" services related to processing needs.

4. Contact point for personal, confidential, or sensitive data per section 1.022.6.H.6.

Client Executive (Paul Gurtner) - A designated Client Executive acts as the State's internal advocate on a broad range of issues that relate directly to the State's satisfaction. The Client Executive will take the lead on product and project initiatives, ensure that the State is notified of compliance issues, streamline communication at all levels, and serve as a senior escalation point.

The Client Executive will be the primary contact for personal, confidential, or sensitive data.

5. Incident Response Resource per section 1.022.6.N.4.

Client Executive (Jan Larue) - The Client Executive will be the primary contact for Incident Response Resource.

6. PCI staff per section 1.022.6.P.

Client Executive (Jan Larue) - The Client Executive will be the primary contact for PCI staff.

7. Merchant related problems per section 1.041.4.

Client Support Specialist (Dayna Emert) – The Client Support Specialist will be the contact for merchant related problems.



8. Subcontractors

Charge slips, signs, imprinters and other supplies may be ordered through Contractor's Customer Service office. Contractor uses General Credit Forms to fulfill supply orders.

1.032 State Staff, Roles, and Responsibilities

1. The Department of Treasury will oversee the Contract.
2. Tom Sharpe is the Administrator of the Receipts Processing Division and will be the Contract Compliance Inspector for this Contract (see section 2.022). Tom's role is to oversee the Contract performance during the term of the Contract.
3. Brenda Vincent is the Assistant Administrator of the Receipts Processing Division that oversees the Contract. Her role is to provide guidance to the Credit Card Program Manager, Electronic Payment Coordinators and assist the Contract Compliance Inspector.
4. Amy Kelso is the Credit Card Program Manager for the State. Amy's roles include overseeing Contract performance on a day-to-day basis during the term of the Contract, Contract issues (e.g., Contract Compliance and changes to Contract), and providing guidance to the Electronic Payment Coordinators.
5. Nancy Morse is the Electronic Payment Coordinator for the State. Nancy's role includes working with Departments to set up new Merchant accounts, testing applications, training for department staff, analyzing volume, costs and assisting department staff in resolving reconciliation, chargebacks or any card related issues.
6. Dave Hendrix is the back-up to the Electronic Payment Coordinator.
7. A Department of Treasury, Receipts Processing Division organization chart is provided as Exhibit 2.

1.033 Other Roles and Responsibilities

1. Each Department assigns an Electronic Payment Coordinator to oversee the departments' card programs.
 - A. The Department Electronic Payment Coordinator is responsible for implementing, monitoring, and managing the card program for the Department. The Department Electronic Payment Coordinators work with the State Electronic Payment Coordinators to set up new Merchant locations, make changes to existing locations and to resolve card related issues.
 - B. The State Electronic Payment Coordinators are the liaisons between the Department and the Contractor to implement programs, analyze costs, and resolve problems. The Contractor cannot work directly with a Department without authorization from Treasury.
 - C. Any requested changes to the Contract must be coordinated by the Credit Card Program Manager, requested changes must be approved by the Contract Compliance Inspector, and a Contract Change Notice must be issued by the Department of Technology, Management and Budget (see section 2.024).
2. Other Contractors per section 1.022.4.B (work with the State and other contractors (e.g., TSYS, FDGS, etc.) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, interchange downgrades, testing, etc. at no cost to the State).

1.040 Project Plan

1.041 Project Plan Management

1. **Contract Conversion:** The Contractor will carry out this project under the direction and control of Treasury. Once approved by Treasury, the Contractor may need to work with each Department to implement this Contract. The Contractor cannot work directly with a Department without Contract Compliance Inspector or designee authorization (see sections 1.033.1.C and 2.022).
2. Deleted – N/A.



3. **Credit Card Program Manager:** There will be continuous liaison with the Credit Card Program Manager for the purpose of reviewing progress and providing necessary guidance in solving problems that arise. The Contractor will meet with the Credit Card Program Manager and the Contract Compliance Inspector on a quarterly basis or as needed in person or via telephone as mutually agreed upon by both parties (see section 2.022).
4. **Single Point Person:** The Contractor must provide a single point person to work with Treasury to assist with Merchant related problems. Examples would include report problems, assistance with new Merchant applications, reconciliation concerns, and training. Questions or concerns must be acknowledged within one business day and resolved as soon as possible.

The State will receive day to day support from a Client Support Specialist. This individual will remain the primary operations contact, responsible for bringing new locations online, reviewing statements and interchange status, handling chargeback issues, and providing other "back-office" services related to processing needs.

5. Deleted – N/A.
6. Deleted – N/A.
7. Deleted – N/A.
8. **Merchant Account Data:** The Contractor must provide the State a report of all Merchant accounts and locations.

1.042 Reports

Reports are needed for individual Department use and also for Treasury's use as a central control Department. As a central control Department, Treasury requires access to all the State's Merchant accounts. Individual Departments must only have access to their own Departments' data. All reports mentioned in this section must be provided free of charge.

1. Online Reporting System

- A. **Accessibility:** The Contractor must have an on-line reporting system that is accessible through the Internet and must be available 24 hours a day, 7 days a week except for the times Contractor takes the site down for maintenance and back up. This is typically performed on the 2nd or 3rd weekend of the month (usually 1 to 2 hours on Sunday).
 - (1) Daily reports must be available no later than the next business day (after transaction date) by 7:00 a.m. Eastern Time.

MerchantConnect Premium provides reports typically 2 hours after settlement.
 - (2) Monthly reports must be made available the first week of the following month.

MerchantConnect Premium provides monthly statements online typically by the third business day of the month.
- B. **Search Functionality:** The online reporting system must include a search function. Search functionality must include, but is not limited to Merchant number, association/chain number, transaction date and the last four digits of the account number.
- C. **Monthly Merchant Statement:** The Contractor must provide a monthly Merchant statement for each open Merchant account. Contractor can provide hard copy via USPS and online monthly statements.



- (1) The Contractor must also provide a monthly Merchant summary statement of the account that includes all Merchants within the Department.

Contractor offers a variety of statement types, each containing varying levels of detail. One of these statement types is the Chain Merchant Summary statement. This report combines several current chain reports into one chain summary report and provides summaries of total fees paid by the chain as well as for each chain merchant location. The merchant recaps are for Month-to-Date and Year-to-Date data. The merchant locations are printed in store/department number order, if such information is provided at the chain level.

- (2) Some departments require a summary statement by association/chain number (i.e. Region or group of Merchants. See section 1.042.1.C.1).
- (3) The report totals must match the deposits, chargebacks, and fee totals assessed to the State's depository accounts. If the State should see a discrepancy, the Client Support Specialist will work with the State to determine the issue.
- (4) Merchant & Summary statements must include, but is not limited to:
 - Gross sales \$
 - Gross refunds \$
 - Gross sales number
 - Gross refunds number
 - Chargebacks (number & dollar)
 - Net sales \$
 - Net sales number
 - Summary of fees broken out by card type per department
 - Interchange summary (including interchange category, interchange fee amount and interchange per item amount, number of items and sales amount)
 - Posting date
 - Reference number
 - Deposit/Batch amount.

The State has reviewed and approved Contractor's Merchant & Summary Statements.

- (5) Additional fields may be provided via custom reports, if required.

D. Daily Summary Report: The Contractor must provide one daily summary report per Department. MerchantConnect Premium provides this report for the State.

- (1) Summary reports must contain subtotals by Merchants and/or associations/chain (i.e. Region or group of Merchants). MerchantConnect Premium provides the State with chain summary reports.
- (2) On reports by association/chain, report must also contain subtotals for Merchant batches included in each association/chain and an overall Department total. The MerchantConnect Premium Settlement Report provides the State with a list of deposits made by merchant number with a grand total listed.
- (3) Report totals must match the deposit amounts assessed to the State's depository accounts. Should the State see a discrepancy, the State would contact the Client Support Specialist for help in determining the issue.

E. Daily Detail Reports: The Contractor must provide a daily detail report for each Merchant. MerchantConnect Premium will provide the State with a daily detail report for each Merchant Account.



- (1) Detail reports must have the ability to be pulled by transaction date, in order to assist with "daily" reconciliation.
- (2) Report totals must match the deposit amounts assessed to the State's depository accounts. Should the State see a discrepancy, the State would contact the Client Support Specialist for help in determining the issue.
- (3) Daily reports must contain:
 - Each transaction within the batch
 - Transaction amount
 - Account number (truncated)
 - Transaction code/type (Sales/refund)
 - Authorization code
 - Transaction date.
 - Error messages
 - Interchange qualification
 - Card present indicator
 - Subtotal by Merchant Number, and association/chain number (e.g., such as by Region or group of Merchants).
 - Summary of total funds sent, received, and rejected.

See section 1.061.6 for Clearview reports to provide daily reports with TSYS Batch and Terminal numbers.

- F. **Merchant Activity Report:** The Contractor must provide Treasury (at least monthly) an electronic file (Microsoft Excel format) that contains processed transaction volumes by Merchant account number for all State Merchants.
- (1) Data must include, but is not limited to, association/chain number, Merchant name, Merchant number, gross sales (dollars), gross credits (dollars), gross sales (items), gross credits (items), and other data as needed.
 - (2) Report totals must match the Monthly Merchant Statement totals, the Interchange Qualification Report totals and the fees charged to the States accounts.
- G. **Chargeback Detail Report:** The Contractor must provide Treasury (at least monthly) an electronic file (Microsoft Excel format) that contains chargeback detail by Merchant account number for all State of Michigan Merchants. MerchantConnect Premium provides this report.
- (1) Data must include, Merchant name, association/chain number, Merchant number, chargeback date, chargeback case number (or other identifier), truncated card number, card type, chargeback status, chargeback amount and chargeback reason code. Contractor's MerchantConnect reporting tool will allow the State to meet with the above data requirement.
 - (2) Report totals must match the chargeback total on the Monthly Merchant Statement. Should the State see a discrepancy, the State would contact the Client Support Specialist for help in determining the issue.
- H. **Central Department Reporting:** As a central Department, Treasury will need access to all reports available to each Department. Treasury's access should not affect reporting provided to departments. Treasury requires access to activity processed for all State Merchant accounts. (See section 1.032 and Exhibit 2 for Treasury staff).
- I. **Interchange Qualification Reporting:** The Contractor must provide Treasury (at least monthly) an electronic file (Microsoft Excel format) that contains interchange qualification detail by Merchant account number for all State Merchants.



(1) Report totals must match the Activity Report Totals, the Monthly Merchant Statement totals and the fees charged to the State's accounts. Should the State see a discrepancy, the State would contact the Client Support Specialist for help in determining the issue.

(2) Data must include:

- Year and Month of reporting (e.g. YYYYMM)
- Merchant name
- Merchant number
- Association/chain number
- Card Plan
- Number of Sales
- Dollar value of Sales
- Number of Credits
- Dollar value of Credits
- Interchange category description (e.g. CPS Retail 2)
- Interchange rate
- Interchange per item fee
- Interchange fees charged
- Assessment rates
- Assessment amount charged
- Total fees charged.

J. **Terminal Report:** The Contractor must provide Treasury a report showing the terminals purchased for the reporting period at the request of the State.

(1) Reports must include, but are not limited to, Department name, Merchant number, terminal, and model, number of terminals purchased, date purchased, and dollar amount.

K. **Equipment Inventory Report:** The Contractor must provide Treasury (at least monthly) a report listing all the terminals deployed at all State Merchant locations.

(1) The report must include, but is not limited to Department name, Merchant number, terminal number, serial number, model, and number of terminals per location.

Presuming that the equipment was acquired from Contractor and the data is available within Contractor's data base, Contractor is able to meet this requirement. It is possible that should the equipment be purchased by the State from another provider Contractor may not have all of the data elements listed above. In that case Contractor will provide the State with any data within Contractor's equipment data base.

L. **Additional Contractor Reports:** The Contractor may provide additional reports (at no cost to the State) not listed that may be helpful to Merchants and/or central departments when the data resides within the confines of Contractor's reporting capabilities.

1.050 Acceptance

1.051 Criteria

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

1. Testing is completed (see section 1.022.1.P) and reporting is provided as required in section 1.042.
2. Transactions are qualifying for the appropriate/lowest possible interchange rates.



1.052 Final Acceptance

Final Acceptance is when testing is completed and accepted by the State and all requirements of Contract are met.

1.060 Proposal Pricing

1.061 Proposal Pricing

1. For authorized Services and Price List, see Attachment A.
2. **Rates for Merchant Fees**
 - A. The State is referring to this Contract as an Interchange Plus contract, and Price Proposals must be submitted using an Interchange Plus Pricing method. Interchange rates and assessments are pass through fees to the State and may change when modified by the Payment Networks. Treasury recognizes the authority of the Contractor to pass those increases or decreases along to each Department within the Contract and to pass through any applicable third party fees. **The “Plus” price of the Contract (or the Contractor’s charges – e.g., authorization fees and transaction fees) will remain firm for the length of the Contract. Any authorization fees charged to the State must be pass through without any mark-up. Treasury will review transaction volume as processed volume increases. (See Price Proposal in Attachment A).**
 - B. Generally, interchange fee changes occur in April once a year. Such changes must be based on general industry changes and supported by adequate detail to document same. Documentation must include current rate and previous rate as provided by the Payment Networks. Revisions may be either increases or decreases. Contractor will make its best efforts to notify the State of price changes in writing at least 30 days prior to their effective date as the same notice may not be received from the Payment Networks. In the event new prices are not acceptable, the Contract may be canceled provided that such cancellation results in the State choosing not to accept the forms of payment described herein. It is not the State’s intention to terminate the Contract for interchange fee increases, although the State would thoroughly review and evaluate substantial interchange fee increases.
 - C. The State expects to receive CPS Retail 2 (Emerging Market) for Visa, Emerging Market for MasterCard and Emerging Markets AIP Rewards for Discover for the majority of the transactions processed. Contractor will work within the confines of the Payment Network Regulations to apply the most favorable rates to the State’s transactions.
3. **Price Proposal Component (Contractor’s Charges)**
 - A. Prices quoted in Attachment A will remain firm for the length of the Contract (exclusive of pass through charges such as interchange, assessments and third party fees).
 - B. In addition to the fees charged by Contractor for its services, the State remains responsible for the payment of Chargebacks, as well as for any returns, adjustments, and Payment Network assessments, fees, fines, or penalties.
4. **Payment Process**
 - A. Fees are to be processed once a month and are not to be netted against credit receipts per section 1.022.2.E unless the State is overdue by 90 days.
 - B. All on-going services and fees provided must be charged to each specific Department account as a separate item and will not net against credit receipts (this may include, per transaction fees, reports, and all other related on-going costs) unless the State is overdue by 90 days. Ongoing services and fees will be charged on a monthly basis.



- C. All one time costs and fees (these may include new equipment, software, and shipping/handling) are to be invoiced to the specific Department, with a copy sent to Treasury (also see section 1.022.1.B.4.d). These one-time costs will be paid through the State's disbursement program.

All invoices are expected to receive prompt payment, and any invoice not paid within 90 days is subject to additional recourse including direct debit to the State, upon email or other written notification to the State's Credit Card Program Manager.

Contractor will not be able to invoice items such as fines, fees, assessments or penalties levied by the Payment Networks and will directly debit the State's DDA upon email or other written notification to the State's Credit Card Program Manager .

- (1) The invoice must include the Contract number and/or purchase order number to ensure timely processing.

5. Equipment

Treasury recognizes that equipment such as new Electronic Card Terminals may be purchased from the Contractor. The State expects that Departments needing this equipment will be able to purchase the equipment at the Contractor's discounted costs. Contractor's equipment cost does not include shipping or handling expenses, and the State will be responsible for the same.

6. Reporting Fees

Fees for reports, other than the reports required in section 1.042, and additional services will be negotiated on an as needed basis between the Contractor and the State. The State expects the fees charged to be in line with other industry providers. Please provide a price list for other available reports (e.g., Clearview). This fee should be a flat fee per month.

Standard reporting received from MerchantConnect is offered at no additional fee. However should the State need access to the TSYS reporting system called Clearview, Contractor is able to support that request. There is a fixed monthly fee per user ID that Contractor will pass-through to the State (see Attachment A).

7. Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dmb for current rates.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback - Deleted/Not Applicable

1.070 Additional Requirements – Deleted/Not Applicable



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of five years beginning August 1, 2011 through July 31, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The 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 three additional one-year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor must 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 the Contract, until Contractor is notified in writing that the 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 the Contract, are incorporated in their entirety and form part of the 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 the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor must 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

(a) The Contract, Statements of Work, Exhibits and Appendices, 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**.

(b) In the event of any inconsistency between the terms of the Contract, Payment Device Processing Agreement (Appendix 1) and Processing Services for Government Entities and Institutions (Appendix 2), the terms of the Contract will take precedence.

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

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

Jim Wilson
 Purchasing Operations
 Department of Technology, Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Email: wilsonj4@michigan.gov
 Phone: (517) 241-1916

2.022 Contract Compliance Inspector

After DTMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Treasury, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Purchasing Operations.** The CCI for the Contract is:

Tom Sharpe, Administrator
 Department of Treasury.



2.023 Project Manager

The following individual will oversee the project:

Amy Kelso, Credit Card Program Manager
Department of Treasury.

2.024 Change Requests

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

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

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the 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 State contact as noted in Section 2.021 and the Contractor's contact as noted in this section, 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. The Contractor's notice address follows:

- a) Elavon, Inc.
7300 Chapman Highway
Knoxville, TN 37920

with a copy to:

Paul Gurtner
832 Meadow Drive
West Mifflin, PA 15122.

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 deemed to be an employee, agent, or servant of the State for any reason. Contractor is 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 must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

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

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

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment. This requirement does not apply to Contractor's use of third party service providers, as described in the Payment Device Processing Agreement, Appendix A, Section 11(b).

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 must 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.



To the extent that any Payment Network registration fees are required for the State, the State will be responsible for the same.

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. The State hereby agrees to the terms of Contractor's Merchant Operating Guide, located at: https://www.merchantconnect.com/CWRWeb/pdf/MOG_Eng.pdf.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the 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 the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, 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 the Contract must 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 the Contract must 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 the Contract is subsequently reduced by the State, the parties must 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 the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under the Contract must 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 must 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 must 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 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. See section 1.061.4 for the invoicing/Payment Process.

2.045 Pro-ration – Deleted/Not Applicable

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 the 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 the 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 the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled (excluding Chargebacks or Payment Network assessments).

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan 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 the 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 the 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 the 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 CCI 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 hereby approves the initial Key Personnel described herein. When assigning a different 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. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the objection, which information Contractor will take under advisement and will work with the State to find an acceptable solution.

(d) The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established.

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

The State reserves the right to request 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, which information Contractor will take under advisement and will work with the State to find an acceptable solution. Replacement personnel for the removed person must be fully qualified for the position.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, 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 must 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 must 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 the 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 must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 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.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change. [Also see section A.11(b) of the Payment Device Processing Agreement (Appendix 1).]

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has 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 the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor may delegate any duties under the Contract to a Subcontractor provided that the Contractor gives notice to the Department of Technology, Management and Budget, Purchasing Operations. The State reserves the right to object to any Subcontractors found, in the reasonable 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 Subcontractor(s) for the removed Subcontractor must 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 reasonably 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 solely for the State, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the 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 is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must 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 the Contract will not relieve Contractor of any obligations or performance required under the Contract.

**2.074 Flow Down**

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

2.075 Competitive Selection

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

2.082 Facilities

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

2.090 Security**2.091 Background Checks**

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

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must 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 in accordance with Section 1.022.6.N.1.



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 or the Payment Network Regulations. [Also see section 13(e)(iv) of the Payment Device Processing Agreement (Appendix 1).]

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

In accordance with Section 1.022.6.N.1, the Contractor must contact Treasury immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Payment Card Industry representative, or a Payment Card Industry approved third party, must be provided with full cooperation and access to conduct a thorough security review. The review must 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 must continue to treat cardholder data as confidential upon contract termination.

The Contractor must provide Treasury documentation showing PCI Data Security certification has been achieved.

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 including such information identified in Section B(27) of the Payment Device Processing Agreement (Appendix 1) (other than Confidential Information of the State as defined below) which in the case of tangible materials provided by Contractor to the State is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is proprietary to the State and 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 the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA. [Also see section B.27 of the Payment Device Processing Agreement (Appendix 1).]

2.102 Protection and Destruction of Confidential Information

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



At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this 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 the 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 during normal business hours 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 subject to Contractor's standard security procedures. Upon 10 Days prior written notice and at all reasonable times during normal business hours, 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, but any travel costs incurred by the State will be the responsibility of the State.

2.112 Examination of Records

For seven years after the Contractor provides any work under the Contract (the "Audit Period"), the State may, at the State's expense and subject to Contractor's standard security procedures, examine and copy any of Contractor's reasonable books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules for transactions processed under the Contract. 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, 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 10 days prior written request, to the State at any time during the Audit Period, at the State's expense. 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 must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the 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 the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the 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 the 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 the 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 the 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) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must 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 must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must 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 the Contract, must 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 the Contract for maintaining equipment/system(s), Contractor must maintain the equipment/system(s) in good operating condition and must undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in the Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in the Contract, when installed, at the time of Final Acceptance by the State and during the Contract period.

Within one 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 the 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 the Contract by Contractor must 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.

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 the 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 which may arise out of or result from the Contractor's performance of Services under the terms of the 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 the Contract.

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

The insurance must be written for not less than any minimum coverage specified in the 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 the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/lara.

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 the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

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

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

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

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 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 \$1,000,000.00.

- 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: \$3,000,000.00 each occurrence and \$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 the 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.

**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 the 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 must fully comply with the insurance coverage required in this Section. Failure of Subcontractor 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 DTMB-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 OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) must contain a provision indicating that coverage's afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without endeavoring to provide 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 Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and within a reasonable time of the insurance renewal date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured's 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 the 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 the 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 the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, terminate the Contract.

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 the 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 must 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

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

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

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

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 the 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 10 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, 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 the 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 must 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 (except as described in Appendix 3) 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 the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA as described in Appendix 3), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State (provided that such notice gives Contractor at least 30 days to cure).

(b) If the Contract is terminated for cause, the Contractor must pay all documented and reasonable costs incurred by the State in terminating the 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 the Contract from other sources ("Re-Procurement Costs") subject to the limitation below. Re-Procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the total Re-Procurement Costs for which Contractor will be responsible will not exceed \$5,000.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the 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 the Contract that are terminated for cause must cease on the effective date of the termination.

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

**2.153 Termination for Convenience**

The State may terminate the 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 the 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 the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the 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 the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the 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 the Contract will be equitably adjusted to reflect any equipment, services, or commodities not provided by reason of the reduction.

(c) If the State terminates the 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 the 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 the 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 must 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 the 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 the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State,



(d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the 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 the 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 the 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 the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the 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 the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the 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 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the 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 the reasonable 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 the 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 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

**2.172 Contractor Personnel Transition**

The Contractor must work with the State, or a specified third party, to develop a reasonable 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, maintain the continuity and consistency of the services required by the 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 must 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 the Contract. The Contractor must 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 the 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.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. For clarification, if termination occurs under Sections 2.153 (termination for convenience) or 2.154 (termination for non-appropriation, to the extent funds are available), then the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract termination that result from transition operations) at the rates agreed upon by the State. 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 must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

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

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

2.180 Stop Work**2.181 Stop Work Orders**

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 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

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

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the 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, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) 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.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, 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 must 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, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must 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>.

2.204 Prevailing Wage

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 must 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 the 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 the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (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 which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) 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 the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

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



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

2.232 Call Center Disclosure – Deleted/Not Applicable

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the 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 the 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(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations [also see Exhibit 1 to Payment Device Processing Agreement, Service Level Agreement (Appendix 3)]:
 - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (iii) 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.
 - (iv) 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:



1. 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.
2. 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) 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

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages as follows:

1. Funds Availability (section 1.022.2.B)

Funds Availability: The Contractor must make funds available to the bank accounts via ACH within 24 hours of receiving the State’s processing deposits from TSYS.

A. The Contractor is liable to Treasury for the dollar amount of unprocessed deposits. The Contractor will give Treasury credit for interest earnings on the undeposited funds from the day the funds should have been deposited.

B. The daily liquidated damage amount (undeposited funds) will be calculated as follows:

$$\begin{aligned}
 & \text{Value of Undeposited Funds} \\
 & \text{X Treasury Bill three-month "ask yield" as stated in the last Friday of each month's} \\
 & \text{Wall Street Journal} \\
 & / 365 \\
 & = \text{Daily Liquidated Damage Amount} \\
 & \text{X Number of Days Delayed} \\
 & = \text{Liquidated Damage Amount.}
 \end{aligned}$$

C. At the Treasury's request, upon verification by the Contractor, the Contractor will credit the applicable bank accounts with the calculated Liquidated Damage Amount. The Liquidated Damage Amount will be capped at \$500 per event (unprocessed or delayed deposits) combined, whether payable to the Treasury or to any other Merchant hereunder.

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, 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 – Deleted/Not Applicable

2.260 Ownership

2.261 Ownership of Work Product by State – Deleted/Not Applicable

2.262 Vesting of Rights – Deleted/Not Applicable

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must 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 must 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.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must 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 must adhere to all applicable Laws and the Payment Network Regulations pertaining to technology standards and existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>. To the extent the State's technology standards conflict with the Agreement (Appendix 1) or the Payment Network Regulations, then the terms of the Agreement and the Payment Network Regulations will prevail.

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**

1984 PA 431 permits DTMB 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 must 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 to, and pay the local unit of government, on a direct and individual basis. MIDEAL members must execute a Joinder agreement (Appendix 4).

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

The State will not retain responsibility for the non-State Government entities' fiscal, data security and any other obligations described in the Contract. All purchase orders or merchant applications for the non-State Government entities will be submitted, invoiced and paid directly on an individual basis in accordance with Contract terms mutually established or determined by the non-State Government entities and the Contractor.



This Contract will be open to the Judicial Branch (Courts) of State Government. Contractor must provide services to the Courts at the established State (Executive Branch) contract prices and terms. All purchase orders or merchant applications for the Courts will be submitted, invoiced and paid directly on an individual basis in accordance with Contract terms mutually established or determined by the Courts and the Contractor. The State (Executive Branch) will not be liable for transactions of the Courts.

The Credit Card Program Manager in section 1.032.4 will not be responsible for implementing, monitoring and managing the card program for the Courts. The Courts will work directly with the Contractor to set up new merchant locations, make changes to existing locations and to resolve card related issues.

2.282 State Employee Purchases – Deleted/Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

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 such as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act.

(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 **Section 2.242** for a time as mutually agreed by the parties.



(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor 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).

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 must 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 the Contract.

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must 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 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Attachment A
Pricing

Table 1 – Transaction Fees - Visa/MasterCard				
Transaction Fees	Range of Transactions	Unit Rate	X Estimated Annual Volume	Total Estimated Cost
Visa/MasterCard	1,500,000 - 2,000,000	\$ 0.0824	2,000,000	\$ 164,800.00
* The unit rate includes the increased TSYS fee of \$0.0474 (2)	2,000,001 - 2,500,000	\$ 0.0774	2,250,000	\$ 174,150.00
	2,500,001 - 3,000,000	\$ 0.0724	2,500,000	\$ 181,000.00
	3,000,001 - 3,500,000	\$ 0.0674	2,750,000	\$ 185,350.00
	3,500,001 - 4,000,000	\$ 0.0649	3,000,000	\$ 194,700.00
	4,000,001 - 4,500,000	\$ 0.0624	3,250,000	\$ 202,800.00
	4,500,001 - 5,000,000	\$ 0.0599	3,500,000	\$ 209,650.00
Total Volume and cost for all ranges.		\$ 0.487	19,250,000	\$ 1,312,450.00

Table 2 – Transaction Fees - Discover				
Transaction Fees	Range of Transactions	Unit Rate	X Estimated Annual Volume	Total Estimated Cost
Discover	0 - 100,000	\$ 0.0824	100,000	\$ 8,240.00
*The unit rate includes the increased TSYS fee of \$0.0474 (2)	100,001 - 200,000	\$ 0.0724	200,000	\$ 14,480.00
	200,001 - 300,000	\$ 0.0649	300,000	\$ 19,470.00
	300,001 - 400,000	\$ 0.0599	400,000	\$ 23,960.00
Total Volume and cost for all ranges.		\$ 0.280	1,000,000	\$ 66,150.00

Table 3 - Equipment/Software				
Equipment/Software	Estimated Number of Equipment/Software	Unit Rate	X Estimated Contract Use	Total Estimated Cost
Hypercom 4210 (dial)	100	\$ 338.00	100	\$ 33,800.00
Total Volume and cost for all commodities.		\$ 338.00	100	\$ 33,800.00

Table 4 - Special Reports				
Reports	Estimated Number of Merchant Accounts	Unit Rate	X Estimated Months (60) of Use	Total Estimated Cost
Electronic Detail (e.g., Clearview) (Monthly Access usage fee - if applicable)	5 Electronic Detail Software	Monthly Fee	60 Months X 5	
		\$ 225.00	300	\$ 67,500.00
Total Volume and cost for reports.		\$ 1,125.00	300	\$ 67,500.00



Estimated Contract Value (Excludes Interchange Rates)

Table / Component	Estimated Volumes/Use	Unit Price	Total Estimated Cost
Table 1 - Transaction Fees - Visa & MasterCard- Year 1	2,800,000	\$0.0724	\$ 202,720.00
Table 1 - Transaction Fees - Visa & MasterCard- Year 2	3,300,000	\$0.0674	\$ 222,420.00
Table 1 - Transaction Fees - Visa & MasterCard- Year 3	3,800,000	\$0.0649	\$ 246,620.00
Table 1 - Transaction Fees - Visa & MasterCard- Year 4	4,300,000	\$0.0624	\$ 268,320.00
Table 1 - Transaction Fees - Visa & MasterCard- Year 5	4,800,000	\$0.0599	\$ 287,520.00
Table 2 - Transaction Fees - Discover - Year 1	150,000	\$0.0724	\$ 10,860.00
Table 2 - Transaction Fees - Discover - Year 2	200,000	\$0.0724	\$ 14,480.00
Table 2 - Transaction Fees - Discover - Year 3	250,000	\$0.0649	\$ 16,225.00
Table 2 - Transaction Fees - Discover - Year 4	300,000	\$0.0649	\$ 19,470.00
Table 2 - Transaction Fees - Discover - Year 5	350,000	\$0.0599	\$ 20,965.00
Table 3 - Equipment/Software (5 yrs.)	100	\$338.00	\$ 33,800.00
Table 4 - Reports (5 yrs.)	300	\$1,125.00	\$ 67,500.00
Total Estimated Contract Value (Excludes Interchange Rates)			\$ 1,410,900.00
Interchange Rates			\$29,534,133.00
Chargeback Fees	1,000	\$ 5.00	\$ 5,000.00
Total Estimated Contract Value			\$30,950,033.00

Performance Bond (Section 3.072): State's Option

Cost for \$1,000,000.00 Performance Bond	\$4,000.00
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Annually

Supply and Overnight POS Device Shipping Prices (Section 1.022.1.B.5.b and 1.022.1.E)

Hypercom Ribbons	\$5.95/each
2-Part Carbonless Charge Slips (100/package)	\$2.50/package
Manual Imprinters	\$22.00/each
Thermal Paper	\$2.15/roll
Thermal Paper (48 rolls/case)	\$90.00/case
Overnight Shipping of Faulty POS Devices	\$35.00

(1) Transaction Fee Pricing: Volume discounts in the Transaction Fee will be based on a monthly review of the previous 12 months transaction volume processed.



(2) The current TSYS fees for dial authorization are \$.058 and for I/P authorization it is \$0.025. These fees are set by TSYS and are subject to change. Pass-through billing for these fees are possible at the merchant level but only if the merchant account is only using dial or I/P and not a combination.