

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. **3**
 to
 CONTRACT NO. **071B2200258**
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Security Mentor, Inc. 1120 Forest Ave., #244 Pacific Grove, CA 93950	Marie White	mwhite@securitymentor.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	831-656-0133 x - 111	0086

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Rock Rakowski	517-373-8059	RakowskiJ@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mike Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Cyber-Security Awareness Training, DTMB Michigan Cyber-Security			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2012	February 28, 2015	3, one year	February 28, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input 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
X	1 year	<input type="checkbox"/>		February 28, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$395,580.00		\$114,400.00	align="center">\$509,980.00	

DESCRIPTION: Effective with State Administrative Board approval January 26, 2016 and a mutually signed change notification, the contract is extended by exercising a one year option to February 28, 2017. Additionally, \$114,400.00 funding is to be added to provide for awareness training. All other terms, conditions, specifications and pricing remain the same. Per vendor agreement, DTMB Procurement approval and State Administrative Board approval.



**Proposed Change Order No. 3 for Contract 071B2200258
Between
State of Michigan and Security Mentor
November 23, 2015**

This is a proposal for Security Mentor to provide one (1) additional option year of training for the State of Michigan under Contract 071B2200258.

The following terms are proposed for the new option year.

Contract Extension:

One Additional Option Year:

Security Mentor proposes that the State of Michigan exercise the 2nd of three (3) additional option years (6 lessons per option year for 6 total lessons) extending the contract through February 28, 2017 for all employees.

Merge Waves/One Group:

All training waves for the SOM will be merged into a single release wave. All employees will take the same lesson, at the same time, provided each agency will still have access under their security officer tab to view their individual employees' progress and metrics.

New Lessons Begin:

All employees will begin taking the "new" set of selected lessons in March 2016 and the last lesson will be sent in January 2017. Lessons will be released every other month.

The SOM will send Security Mentor a complete new file of employees taking training by end of February 2016. Security Mentor will provide the SOM the ability to do a complete download of the old file with "date of completion" or "not completed" in the lesson status field.

Lesson Notifications:

Email notifications for new lessons will be sent to all employees as one wave rather than by multiple waves as done previously. Notifications will be sent sequentially to employees with a notification every few seconds until all employees have been notified.

Adds/Changes/Deletes:

Beginning in March 2016, the SOM will still send adds/deletes/changes by agency on a monthly basis. The adds/deletes/changes will continue to be delivered in a single file as is currently done. As previously agreed upon, the State of Michigan (SOM) will stop sending adds/deletes/changes for the current training term on October 7, 2015.

Lesson Credits:

The SOM will continue to receive credit for deletes. Security Mentor will provide "Lesson Credits" for trainees who leave the employment of the State and are permanently removed from Security Mentor's training prior to completion of training. A Lesson Credit represents the value of a single lesson for a single Trainee for the current Term. The value of a Lesson Credit is \$0.34. Lesson Credits will be calculated as follows. Lesson credits will begin accruing after the release of the third lesson in the training curriculum. One Lesson Credit will be provided for each Unreleased Lesson in a Closed User Account, up to a maximum of the total number of Lessons in the training curriculum minus three. Credits are only granted when the Customer submits a request to Security Mentor for a User Account to be closed via one of Security Mentor's approved methods, such as providing a CSV file of names and email addresses. Lesson Credits for a Closed User Account will be calculated starting the first regular business day that Security Mentor receives the request from Customer to close a User Account. Lesson Credits can be applied towards the purchase of additional Training Subscriptions for new hires. Lesson credits cannot be refunded to customer.

Lessons:

The SOM will not have a different set of lessons "core lessons" for new employees. New employees will be on the same lesson release schedule with other employees with the same six (6) lessons chosen for contract extension.

In Contract Change Notice No. 3, six (6) lessons will be released, three of which will be new lessons in new topic areas, and the remaining three will be updated lessons from the existing material topics already covered previously.

In this option year under Contract Change Notice No. 3, the SOM will select the three updated lessons to be delivered in the year from the existing CORE and ADVANCED curricula.

Single Sign-On:

The SOM does not have the ability at this time for Federated Single Sign-on (SSO) as mentioned, but this will be reevaluated prior to February 2016 to see if single sign-on is possible for Michigan Government infrastructure. If the SOM decides to use Federated SSO, there will be a one-time fee of \$1,495 per SSO instance federated with Security Mentor.

Price:

Pricing for the additional option year with six lessons for the year delivered bimonthly is as follows:

- \$2.08/trainee for the additional option year

The State of Michigan will provide for payment for the option year at initiation of Contract Change Notice No. 3.

MIDEAL Government and University User Pricing

Security Mentor further proposes that the training curriculum that is offered through this Amendment to the State of Michigan also be extended to MIDEAL government and university

customers. New lessons in this training curriculum, as well as the ADVANCED curriculum, can only be purchased by MiDEAL customers at the same time as the purchase of the CORE curriculum program or after, but not before, and will be on a monthly release schedule as per the current State of Michigan contract with Security Mentor. Accordingly, a total of 12 lessons will be available each year at a cost of \$4.16 per trainee per year. New lessons will become available on the same schedule as the State of Michigan.

MiDEAL customers must complete all training by the end date of the contract with the State of Michigan. If a MiDEAL customer selects to start training at a date where training cannot be completed by the State of Michigan contract end date, the MiDEAL customer can select either to accelerate the lesson release schedule to meet this end date or choose not to offer all lessons in the curriculum.

The MiDEAL setup fee will be \$2,430 per year in this option year. The minimum purchase is one year of training. If a MiDEAL customer selects to do multiple training Terms (curricula) with Security Mentor, the MiDEAL fee will apply to each training term.

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

June 5, 2014

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B2200258
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Security Mentor, Inc. 1120 Forest Ave., #244 Pacific Grove, CA 93950	Marie White	mwhite@securitymentor.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(831) 656-0133 x – 111	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Rock Rakowski	517-373-8059	RakowskiJ@michigan.gov
BUYER	DTMB	Mike Breen	517-284-7002	breenm@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Cyber-Security Awareness Training, DTMB Michigan Cyber-Security			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2012	February 28, 2015	3 one year	February 28, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		February 28, 2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$180,180.00		\$395,580.00		

Effective May 6, 2014, the first option year available on this Contract is hereby utilized. The new contract end date is February 28, 2016. This contract is also increased by \$180,180.00. Please note the buyer has been changed to Mike Breen. All other terms, conditions, specifications, and pricing remain the same. Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated May 6, 2014.



Proposal for Contract 071B2200258

between

the State of Michigan and Security Mentor, Inc.

Security Mentor ADVANCED Curriculum for the State of Michigan

This is a proposal for Security Mentor to provide six (6) additional ADVANCED curriculum lessons to the State of Michigan under Contract 071B2200258.

I. ADVANCED Curriculum and Lesson Credits

Security Mentor will provide the Security Mentor ADVANCED curriculum to the State of Michigan employees consisting of the following lessons:

- | | |
|--|--|
|  Social Engineering |  Privacy |
|  Data Loss Prevention (DLP) |  Working Remotely |
|  Safe Disposal |  Travel Security |

The ADVANCED curriculum lessons will be released to employees only after they have completed the CORE curriculum lessons. The ADVANCED curriculum will be rolled out continuing the same roll out schedule as the CORE Curriculum lessons with a new lesson every other month. Thus, the first ADVANCED curriculum lesson will be released on August 12, 2014 to the first wave of trainees (Pilot Wave), 60 days after the last CORE lesson will be released to the Pilot Wave.

Pricing for the CORE and AVANCED curricula will be as follows and become effective upon approval of this Amendment:

- \$1.98 for six (6) ADVANCED curriculum lessons for existing trainees for a term of one (1) year
- \$3.96 for twelve (12) CORE curriculum lessons for new hires if only the CORE curriculum training is provided
- \$5.94 for eighteen (18) CORE + ADVANCED curriculum lessons for new hires ($3.96 + 1.98 = \$5.94$) if new hires will be given the CORE + ADVANCED curricula

Starting with this contract Amendment, Security Mentor will provide "Lesson Credits" for trainees who leave the employment of the State and are permanently removed from Security Mentor's training prior to completion of training. A Lesson Credit represents the value of a single lesson for a single Trainee for the current Term. The value of a Lesson Credit is \$0.33.

Lesson Credits will be calculated as follows. Lesson credits will begin accruing after the release of the third lesson in the training curriculum. One Lesson Credit will be provided for each Unreleased Lesson in a Closed User Account, up to a maximum of the total number of Lessons in the training curriculum minus three. Credits are only granted when the Customer submits a request to Security Mentor for a User Account to be closed via one of Security Mentor's approved methods, such as providing a CSV file of names and email addresses. Lesson Credits for a Closed User Account will be calculated starting the first regular business day that Security Mentor receives the request from Customer to close a User Account. Lesson Credits can be applied towards the purchase of additional Training Subscriptions for new hires. Lesson credits cannot be refunded to customer.

II. MiDEAL Government and University User Pricing

Security Mentor further proposes to extend the ADVANCED curriculum and Lesson Credits to MiDEAL government and university customers. ADVANCED curriculum lessons can only be purchased by MiDEAL customers with or after the CORE curriculum lessons. ADVANCED curriculum lessons will be released to employees only after completion of CORE curriculum lessons and will be on a monthly release schedule. MiDEAL customers must complete all training by the end date of the contract with the State of Michigan. If a MiDEAL customer selects to start training at a date where training cannot be completed by the State of Michigan contract end date, the MiDEAL customer can select either to accelerate the lesson release to meet this end date or choose not to offer all lessons in the curriculum.

The MiDEAL setup fee will be \$2,315 for the CORE curriculum; the setup fee for the ADVANCED curriculum will be \$1,158; and the setup fee for the CORE and ADVANCED curricula combined will be \$3,473. If a MiDEAL customer selects to do multiple training Terms (curricula) with Security Mentor, the MiDEAL fee will apply to each training term.

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

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B2200258
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Security Mentor, Inc. 1120 Forest Ave., #244 Pacific Grove, CA 93950	Marie White	mwhite@securitymentor.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(831) 656-0133 x – 111	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Rock Rakowski	517-373-8059	RakowskiJ@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Cyber-Security Awareness Training, DTMB Michigan Cyber-Security			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
August 1, 2012	February 28, 2015	No Options	February 28, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		February 28, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$35,900.00		\$215,400.00		

Effective immediately, this Contract is INCREASED by \$35,900.00. Please note the 1% administrative fee shall be only applicable to MiDeal purchases and not to State purchases.

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

Per vendor agreement and DTMB Procurement approval.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
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 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

**NOTICE
 OF
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 Between
THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
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	TELEPHONE	CONTRACTOR #, MAIL CODE
	(831) 656-0133 x – 111	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Rock Rakowski	(517) 373-8059	RakowskiJ@michigan.gov
BUYER:	DTMB	Reid Sisson	(517) 241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Cyber-Security Awareness Training, DTMB Michigan Cyber-Security			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
2.5 Yrs.	August, 1 2012	February 28, 2015	No Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of RFP-RS-084R2200109, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$179,500.00

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Security Mentor, Inc. 1120 Forest Ave., #244 Pacific Grove, CA 93950	Marie White	mwhite@securitymentor.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(831) 656-0133 x – 111	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Rock Rakowski	517-373-8059	RakowskiJ@michigan.gov
BUYER	DTMB	Reid Sisson	517-241-1638	sissonr@michigan.gov

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August 1, 2012	February 28, 2015	No Options	February 28, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
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VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$35,900.00		\$215,400.00		

Effective immediately, this Contract is INCREASED by \$35,900.00. Please note the 1% administrative fee shall be only applicable to MiDeal purchases and not to State purchases.

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

Per vendor agreement and DTMB Procurement approval.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

CONTRACT NO. 071B2200258
 Between
THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Security Mentor, Inc. 1120 Forest Ave., #244 Pacific Grove, CA 93950	Marie White	services@securitymentor.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(831) 656-0133	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Rock Rakowski	(517) 373-8059	Rakowski@michigan.gov
BUYER:	DTMB	Reid Sisson	(517) 241-1638	sissonr@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Cyber-Security Awareness Training, DTMB Michigan Cyber-Security			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
2.5 Yrs.	August, 1 2012	January 31, 2015	No Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of RFP-RS-084R2200109, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$179,500.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. RFP-RS-084R2200109. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

Error! Use the Home tab to apply Contract_NO to the text that you want to appear here. 071B2200258

FOR THE CONTRACTOR:

Firm Name
Security Mentor, Inc.

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name/Title
Jeff Brownlee, Chief Procurement Officer

DTMB/Procurement

Division

Date



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Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 PROJECT REQUEST

Provide a Cyber-Security Awareness Training Solution to implement security training for State of Michigan employees and in the future rolling out the training to local governments, schools and the public. Roll-out to select State agencies is anticipated for August 2012, with full roll-out to all State agencies over the next six months.

Goals

1. Employee Cyber Security Awareness Training
2. Develop an Enterprise awareness program that meets Auditor General audit findings
3. Assist Agencies in security awareness training for audit compliance
4. Identify various content and learning management system for the program

1.002 BACKGROUND

Cyber Awareness is the single most effective tool in preventing cyber incidents. Awareness programs speak to a reduction of up to 50% of future infections.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

- Learning Management System (LMS) Software as a Service Implementation
LMS Content and Curriculum
Solution Hosting (Software as a Service)

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

The State reserves the right to add spending authority to this Contract to purchase products and services.

1.102 OUT OF SCOPE

N/A

1.103 ENVIRONMENT

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

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:

<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>



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

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

Enterprise IT Security Policy and Procedures:

http://www.michigan.gov/documents/dmb/1310_183772_7.pdf
http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf
http://www.michigan.gov/documents/dmb/1325_193160_7.pdf
http://www.michigan.gov/documents/dmb/1335_193161_7.pdf
http://www.michigan.gov/documents/dmb/1340_193162_7.pdf
http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf

The State's security environment includes:

- Secured Socket Layers.

IT Strategic Plan:

<http://www.michigan.gov/itstrategicplan>

IT eMichigan Web Development Standard Tools:

http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf

The State Unified Information Technology Environment (SUITE):

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

Agency Specific Technical Environment

- Internet Explorer version 6.0 or higher

1.104 Work And Deliverable

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project include:

1. Contractor will establish solution content and curriculum, as described in Attachment C – Cyber-Security Awareness Training Solution and Hosting.
2. Contractor will develop content to assist employee/users to recognize security concerns/incidents, change their behavior and respond appropriately to security incidents, as described in Attachment C.
3. Contractor will deliver Web-based Cyber Security Awareness Training to SOM employees
4. Contractor will provide training in the following schedule:
 - a. All State employees will begin training over the six-month start-up period and there will be no more than six total monthly roll-out groups.
 - b. Each training roll-out group will be given a total of twelve lessons with one lesson released every other month over the course of twenty-four months.
 - c. New hires can be added to existing roll-out groups and will be given training at an accelerated schedule so that they are on the same schedule of the roll-out group to which they belong.
 - d. Each training roll-out group will have access to a total of twenty-four months of training.



Contractor's solution, including State and Contractor roles, is described in Appendix C.

Requirements (Please see Attachment A)

Contractor shall provide a solution that meets the functional, technical, and security requirements detailed in Attachment A.

1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

A. Contractor Staff

The Contractor will provide resumes in the attached Personnel Resume templates (Attachment E) for staff, including subcontractors, who will be assigned to the Contract, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The competence of the personnel the Contractor proposes for this project will be measured by the candidate's education and experience with particular reference to experience on similar projects as described in this Statement of Work. The Contractor will commit that staff identified in its proposal will actually perform the assigned work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

The Contractor will identify a Single Point of Contact (SPOC), who is identified in Attachment E – Contractor Staff Roles and Responsibilities. The duties of the SPOC shall include, but not be limited to:

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

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

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

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Agency should specify State personnel dedicated to project, and identify their associated roles and responsibilities.

The State will be responsible for providing computer access to the Internet for its employees.

The State expects to provide training at a rate of 5000 to 8000 desktops per month, spread over a six-month period (not to exceed 50,000).

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



Executive Subject Matter Experts

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

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

Name	Agency/Division	Title	Phone/e-mail
Rock Rakowski	DTMB	Project Manager	517-373-8059

State Project Manager- (MDTMB and Agency)

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

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

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

Name	Agency/Division	Title
Rock Rakowski	MDTMB	Project Manager

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

Name	Agency/Division	Title
Reid Sisson	MDTMB	Contract Administrator

1.203 OTHER ROLES AND RESPONSIBILITIES – DELETED/NA

1.300 Project Plan

1.301 PROJECT PLAN MANAGEMENT



Orientation Conference Call

Upon seven (7) calendar days from execution of the Contract, the Contractor will be required to attend an orientation conference call to discuss the content and procedures of the Contract. The meeting will be held at a date and time mutually acceptable to the State and the Contractor.

Solution Implementation

DTMB has established a target of August 2012 for the training service to be available, and for State employees to begin participating.

Performance Review Meetings

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

Project Control

The Contractor will carry out this project under the direction and control of MDTMB.

1.302 REPORTS

A bi-weekly progress report must be submitted to the Agency Project Manager up through Solution Implementation, at which point bi-weekly progress reports may be submitted monthly through the life of this Contract. This report may be submitted with the billing invoice. Each progress report must contain the following:

- Curriculum Content Update
- Additional reporting requirements as specified in Attachment A

1.400 Project Management

1.401 ISSUE MANAGEMENT

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

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

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

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

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Executive Subject Matter Experts (SME's)



1.402 RISK MANAGEMENT

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

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

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

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

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

1.403 CHANGE MANAGEMENT

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

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

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

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

1.500 Acceptance

1.501 CRITERIA

MDTMB will approve the Solution for implementation, based on review by Michigan Cyber Security and approval by the State Chief Security Officer.

1.502 FINAL ACCEPTANCE – DELETED/NA

1.600 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

**Method of Payment**

Payment will be based upon number of new end-user licenses implemented each month.

Payment will be made on a monthly basis. DTMB will pay CONTRACTOR upon receipt of properly completed invoices which shall be submitted to the Project Manager not more often than monthly. All invoices should reflect actual work completed by payment date, and must be approved by the Agency Project Manager prior to payment. The invoices shall describe and document to the Project Manager's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by the DTM within thirty (45) days after receipt of properly completed invoices.

Costs are detailed within Appendix B – Cost Table, attached.

If applicable, the bidder must consider the MiDEAL administrative fee in Section 2.281, when developing its proposed prices.

Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's MDTMB Contract Administrator with the reduced prices within fifteen (15) Business Days [or other appropriate time period] of the reduction taking effect. – OR – Contractor shall send updated prices to the State annually

Statements of Work and Issuance of Purchase Orders

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

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

**Invoicing**

Contractor will submit properly itemized invoices to

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909

or

DTMB-Accounts-Payable@michigan.gov

. Invoices must provide and itemize, as applicable:

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

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

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

1.602 HOLDBACK – DELETED/NA



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 CONTRACT TERM

This Contract is for a period of thirty (30) months beginning August 1, 2012 through January 31, 2015. All outstanding Purchase Orders must also expire upon the termination 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, shall remain in effect for the balance of the fiscal year for which they were issued.

2.002 OPTIONS TO RENEW

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to three (3) additional one-year periods.

2.003 LEGAL EFFECT

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

Except as otherwise agreed in writing by the parties, the State shall not be liable for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract or Change Order has been approved by the State Administrative Board (if required), signed by all the parties and a Purchase Order against the Contract has been issued.

2.004 ATTACHMENTS & EXHIBITS

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

2.005 ORDERING

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

2.006 ORDER OF PRECEDENCE

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

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



2.007 HEADINGS

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

2.008 FORM, FUNCTION & UTILITY

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

2.009 REFORMATION AND SEVERABILITY

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

2.010 Consents and Approvals

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

2.011 NO WAIVER OF DEFAULT

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

2.012 SURVIVAL

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

2.020 Contract Administration

2.021 ISSUING OFFICE

This Contract is issued by the Department of Technology, Management and Budget, (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The DTMB-Procurement Contract Administrator for this Contract is:

[Reid Sisson](#)

Buyer

Procurement

Department of Technology, Management and Budget

Mason Bldg, 2nd Floor

PO Box 30026

Lansing, MI 48909

SissonR@michigan.gov

517-241-1638

2.022 CONTRACT COMPLIANCE INSPECTOR – DELETED/NA



2.023 PROJECT MANAGER

The following individual will oversee the project:

Rock Rakowski
Department of Technology Management and Budget
515 Westshire Drive
Lansing MI 48913
RakowskiJ@michigan.gov
517-373-8059

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, Contractor shall provide a detailed outline of all work to be done, including tasks necessary to accomplish the Additional Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

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

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

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

- (1) Change Request at State Request
If the State requires Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
- (2) Contractor Recommendation for Change Requests:
Contractor shall be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.
- (3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal shall include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.



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

2.025 NOTICES

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

State:

State of Michigan
Procurement
Attention:
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:

See Contract Notice Page

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 giving 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 shall be deemed to be an employee, agent or servant of the State for any reason. Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 COVENANT OF GOOD FAITH

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



2.029 ASSIGNMENTS

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

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

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

2.030 General Provisions

2.031 MEDIA RELEASES

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

2.032 CONTRACT DISTRIBUTION

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

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

2.034 WEBSITE INCORPORATION

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

2.035 FUTURE BIDDING PRECLUSION

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



2.036 FREEDOM OF INFORMATION

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

2.037 DISASTER RECOVERY

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

2.040 Financial Provisions

2.041 FIXED PRICES FOR SERVICES/DELIVERABLES

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

2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES

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

2.043 SERVICES/DELIVERABLES COVERED

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

2.044 INVOICING AND PAYMENT – IN GENERAL

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice shall 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 shall 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 1.600**.
- (c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d1) All invoices should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Procurement, Department of Management & Budget. This activity shall occur only upon the specific written direction from DTMB-Procurement.



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

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 PRO-RATION

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

2.046 ANTITRUST ASSIGNMENT

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

2.047 FINAL PAYMENT

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

2.048 ELECTRONIC PAYMENT REQUIREMENT

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

2.050 Taxes

2.051 EMPLOYMENT TAXES

Contractor shall collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 SALES AND USE TAXES

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



2.060 Contract Management

2.061 CONTRACTOR PERSONNEL QUALIFICATIONS

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

2.062 CONTRACTOR KEY PERSONNEL – DELETED/NA

2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE’S REQUEST

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

2.064 CONTRACTOR PERSONNEL LOCATION – DELETED/NA

2.065 CONTRACTOR IDENTIFICATION

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

2.066 COOPERATION WITH THIRD PARTIES

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

2.067 CONTRACT MANAGEMENT RESPONSIBILITIES

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor’s duties shall include monitoring and reporting the State’s performance of its participation and support responsibilities (as well as Contractor’s own responsibilities) and providing timely notice to the State in Contractor’s reasonable opinion if the State’s failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

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



2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES

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

2.070 Subcontracting by Contractor

2.071 CONTRACTOR FULL RESPONSIBILITY

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

2.072 STATE CONSENT TO DELEGATION

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

2.073 SUBCONTRACTOR BOUND TO CONTRACT

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

2.074 FLOW DOWN

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

2.075 COMPETITIVE SELECTION

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



2.080 State Responsibilities

2.081 EQUIPMENT

The State shall provide only the equipment and resources identified in the Statement 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 shall have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it shall 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 shall be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations shall 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 shall be initiated by the State and shall be reasonably related to the type of work requested.

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

2.092 SECURITY BREACH NOTIFICATION

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State shall 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 two business days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI DATA SECURITY STANDARD – DELETED/NA

2.100 Confidentiality

2.101 CONFIDENTIALITY

Contractor and the State each acknowledge that the other possesses and shall continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of



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

2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION

The State and Contractor shall 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 shall (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party shall limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this 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 in this Section shall not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section shall not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 NO IMPLIED RIGHTS

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

2.105 RESPECTIVE OBLIGATIONS

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



2.110 Records and Inspections

2.111 INSPECTION OF WORK PERFORMED

The State's authorized representatives shall at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives shall 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 shall provide all reasonable facilities and assistance for the State's representatives.

2.112 EXAMINATION OF RECORDS

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State shall 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 shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records shall 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 shall meet to review each audit report promptly after issuance. The Contractor shall 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 shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 ERRORS

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

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

2.120 Warranties

2.121 WARRANTIES AND REPRESENTATIONS

The Contractor represents and warrants:



- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State shall infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Procurement.

2.122 WARRANTY OF MERCHANTABILITY – DELETED/NA



2.123 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE – DELETED/NA

2.124 WARRANTY OF TITLE – DELETED/NA

2.125 EQUIPMENT WARRANTY – DELETED/NA

2.126 EQUIPMENT TO BE NEW – DELETED/NA

2.127 PROHIBITED PRODUCTS – DELETED/NA

2.128 CONSEQUENCES FOR BREACH

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

2.130 Insurance

2.131 LIABILITY INSURANCE

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

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

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

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

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

See www.michigan.gov/dleg.

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

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

1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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



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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED 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 a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

4. Employers liability insurance with the following minimum limits:

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

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

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

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

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

2.132 SUBCONTRACTOR INSURANCE COVERAGE

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



2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 GENERAL INDEMNIFICATION

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

The State may not indemnify, defend, or hold harmless any other party.

2.142 CODE INDEMNIFICATION

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

2.143 EMPLOYEE INDEMNIFICATION

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



2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION

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 this 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 this Contract.

- (a) After the State receives notice of the action or proceeding involving a claim for which it shall 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 this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State



determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.150 Termination/Cancellation

2.151 NOTICE AND RIGHT TO CURE

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

2.152 TERMINATION FOR CAUSE

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 TERMINATION FOR CONVENIENCE

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



provisions of this Contract that are terminated for convenience must cease on the effective date of the termination.

2.154 TERMINATION FOR NON-APPROPRIATION

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

2.155 TERMINATION FOR CRIMINAL CONVICTION

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 TERMINATION FOR APPROVALS RESCINDED

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

2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION

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



expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 RESERVATION OF RIGHTS

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

2.160 Termination by Contractor

2.161 TERMINATION BY CONTRACTOR

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

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

2.170 Transition Responsibilities

2.171 CONTRACTOR TRANSITION RESPONSIBILITIES

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor shall comply with direction provided by the State to assist in the orderly transition of data to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ten business days. These efforts must include, but are not limited to, those listed in **Section 2.150**.

2.172 CONTRACTOR PERSONNEL TRANSITION

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

2.173 CONTRACTOR INFORMATION TRANSITION

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



2.174 CONTRACTOR SOFTWARE TRANSITION – DELETED/NA

2.175 TRANSITION PAYMENTS

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

2.176 STATE TRANSITION RESPONSIBILITIES

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

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

2.180 Stop Work

2.181 STOP WORK ORDERS

The State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this **Section**. 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 2.182**.

2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER

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

2.183 ALLOWANCE OF CONTRACTOR COSTS

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



2.190 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 shall be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any dispute after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, to resolve the dispute without the need for formal legal proceedings, as follows:

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

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

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

(4) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, shall 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 shall 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 shall 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 shall 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 that the damages to the party resulting from the breach shall be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 CONTINUED PERFORMANCE

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



2.200 Federal and State Contract Requirements

2.201 NONDISCRIMINATION

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

2.202 UNFAIR LABOR PRACTICES

Under 1980 PA 278, MCL 423.321, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled 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, shall 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 shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 PREVAILING WAGE – DELETED/NA

2.210 Governing Law

2.211 GOVERNING LAW

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

2.212 COMPLIANCE WITH LAWS

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

2.213 JURISDICTION

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to 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 shall be 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, disclosure of personal information, or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 DISCLOSURE OF LITIGATION

Contractor shall 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) shall 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 shall disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation shall be deemed to satisfy the requirements of this Section.

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

- (a) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (2) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor shall 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-Procurement.
 - (2) Contractor shall also notify DTMB Procurement 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 shall also notify DTMB-Procurement within 30 days whenever changes to company affiliations occur.

2.232 CALL CENTER DISCLOSURE

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



2.233 BANKRUPTCY

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

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

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

2.242 SERVICE LEVEL AGREEMENT (SLA)

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



- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 LIQUIDATED DAMAGES - DELETED/NA

2.244 EXCUSABLE FAILURE

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

2.250 Approval of Deliverables – Deleted/NA

2.260 Ownership

2.261 OWNERSHIP OF WORK PRODUCT BY STATE –DELETED/NA

2.262 VESTING OF RIGHTS – DELETED/NA



2.263 RIGHTS IN DATA

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

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

The Contractor may use any and all feedback and survey responses provided by the State regarding the Service, without obligation or liability, provided that Contractor complies with Section 2.100 with regard to any Confidential Information of the State

2.264 OWNERSHIP OF MATERIALS

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

2.270 State Standards

2.271 EXISTING TECHNOLOGY STANDARDS

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

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/documents/dmb/1460.00_184733_7.pdf. 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 – DELETED/NA

2.280 Extended Purchasing

2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY

A. MiDEAL Requirements

1. The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing. A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal.



2. The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.
3. The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.
4. Estimated requirements for MiDEAL members are not included in the quantities shown in this RFP, unless otherwise noted.
5. The State of Michigan reserves the right to negotiate additional discounts based on any increased volumes by MiDEAL members.

B. MiDEAL Administrative Fee

1. The Contractor must remit a MiDEAL administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals one percent (1%) of the total quarterly sales reported.
2. The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.
3. The Contractor must send the check to the following address:
 Department of Technology, Management and Budget
 Financial Services – Cashier Unit
 Lewis Cass Building
 320 South Walnut St.
 P.O. Box 30681
 Lansing, MI 48909

2.282 STATE EMPLOYEE PURCHASES – DELETED/NA

2.283 COOPERATIVE PURCHASING

- (a) This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between the State of Michigan and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this Contract if such State allows participation by such entities.
- (b) All MiDEAL processes, invoicing relationships, reporting and MiDEAL Service Fee also apply to cooperative purchasing participants.
- (c) The State of Michigan reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

2.290 Environmental Provision

2.291 ENVIRONMENTAL PROVISION – DELETED/NA

2.300 Deliverables

2.301 SOFTWARE – DELETED/NA

2.302 HARDWARE – DELETED/NA



2.310 Software Warranties

2.311 PERFORMANCE WARRANTY – DELETED/NA

2.312 NO SURREPTITIOUS CODE WARRANTY

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

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

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

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

2.313 CALENDAR WARRANTY

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

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

2.314 THIRD-PARTY SOFTWARE WARRANTY – DELETED/NA

2.315 PHYSICAL MEDIA WARRANTY – DELETED/NA

2.320 Software Licensing – Deleted/NA

2.330 Source Code Escrow – Deleted/NA



Glossary

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.



State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Attachment A

Functional and Technical Requirements

Solution Requirements

Topic / Regulatory Subject	Security Awareness Project Requirements	Security Mentor Response
General		
	System must provide appropriate User response speeds.	System speed is typical of other web-based training applications
	The system proposed must be available 24x7x365 days with 98% availability.	Confirm
	Solution must be a vendor-hosted system within the United States.	Security Mentor Hosting is based in the US
	The vendor's responsible for the backing up/restoration of data in agreement with defined SLA.	Security Mentor does regular backup of data and restoration, if necessary.
	The vendor must State destroy all data on termination of the contract after state receives deliverables.	Confirm
	The vendor will ensure that all day-to-day operating system and server maintenance tasks in accordance with industry best practice and/or software provider recommendations.	Confirm
	The vendor will ensure that adequate security is in place to prevent access by non-authorized parties.	Confirm
Content		
	The content must be engaging, entertaining, interactive, and fun, utilizing a variety of instructional approaches.	Security Mentor's content meets all these requirements. Please see the attached Exhibit for details. To see an video introduction to Security Mentor's training, please visit: http://www.youtube.com/watch?v=RQgsR-tjosl



Topic / Regulatory Subject	Security Awareness Project Requirements	Security Mentor Response
	The content must utilize a basic vocabulary and communicate effectively to all staff at a non-technical level.	Security Mentor believes that it is a critical that trainees are able to understand and relate to training. Too much training is presented in a technical or formal manner. Security Mentor uses an approachable style that people would use day-to-day conversation.
	The vendor must demonstrate that content is kept current.	Security Mentor reviews content annually and updates the content for current security trends as well as news and events
	The content must be able to be branded for the State.	Security Mentor can Lesson Player can be branded with the State’s logo.
	The content must be section 508 / ADA compliant	Under development.
	The content must be SCORM compliant.	Security Mentor currently has the capability to provide SCORM content, should in the future if the State chooses to host our security awareness training internal on the State’s LMS in the future, Security Mentor will be able to accommodate with the appropriate terms in place.
	Students must be able to freely navigate forward or back through the content.	Trainees can move backwards in the lesson at any time. To ensure that each trainee goes through the entire lesson, trainees can’t move forward in the lesson until they complete the current page. Once a page is completed, trainees can move forward or backward at will.
	The vendor's training must allow a user to stop and pick backup where they left off.	Trainees can close any Security Mentor lesson and it will open on the page where they last left off. This permits trainees to take on other important work tasks without losing their place in their training.
	The majority of the vendor's lessons should be no-longer than 10 minutes in length.	On average, each Security Mentor lesson is 10 minutes in length.
	Content must address the following :	
	<ul style="list-style-type: none"> Intro to Security Awareness 	Security Mentor CORE curriculum lesson



Topic / Regulatory Subject	Security Awareness Project Requirements	Security Mentor Response
	<ul style="list-style-type: none"> • Computer Security 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Email Security 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Reporting Incidents 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Passwords 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Phishing 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Office Security 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Social Networking 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Web Security 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Public WiFi 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Mobile Security 	Security Mentor CORE curriculum lesson
	<ul style="list-style-type: none"> • Identity Theft 	
	<ul style="list-style-type: none"> • Social Engineering 	Security Mentor ADVANCED curriculum lesson
	<ul style="list-style-type: none"> • Acceptable Use 	Security Mentor ADVANCED curriculum lesson
	<ul style="list-style-type: none"> • Safe Disposal 	Security Mentor ADVANCED curriculum lesson
	<ul style="list-style-type: none"> • Information Privacy 	Security Mentor CORE curriculum lesson
Content Delivery (Learning Management System)		
	<p>The vendor's solution must deliver training via a web portal via industry standard web browsers, without the need for installation of browser add-ons.</p>	<p>Security Mentor training requires only a web browser with Flash. Although Flash is a plug-in it is in 99% of web browsers (http://www.adobe.com/products/flashplatformruntimes/statistics.html). In addition, Security Mentor tests if trainees have the Flash browser and direct trainees to the Adobe website if it is missing.</p>



Topic / Regulatory Subject	Security Awareness Project Requirements	Security Mentor Response
	The vendor's solution may or may not include sound. If sound is required then vendor must propose solution for sound at students desktop not to be disruptive to other staff in the area and include this hardware or software in the pricing.	Security Mentor's training doesn't require sound.
	The vendor's system must support user log-on authentication	Security Mentor support log-on with username password over SSL. If a trainee forgets their password, the Security Mentor system automatically allows trainees to create a new password. In addition, unlike many vendors, all Security Mentor's content and trainee data is delivered over SSL.
	The vendor's solution must allow staff to take training multiple times.	Trainees can take Security Mentor's training at any time.
	The vendor's solution must allow the state to offer multiple lessons required throughout the year.	Security Mentor delivers one ten-minute lesson per the established schedule, each lesson covers one topic. This training model keeps people thinking about security throughout the year, creating a more secure workplace. The short lessons focused on one topic make training easier to learn and remember.
	The vendor's solution must notify employees via e-mail that they have an outstanding obligation to complete a lesson.	Security Mentor sends emails to employees notifying them about lessons have not been completed by the time that lessons are due. The lesson due period is configurable by the State.
	The vendor's solution must track employee status, scores, and interactions by state organization and able to report by such.	Security Mentor tracks the completion of each page, each interaction, and the lesson.
	The vendor's solution must allow the state to delegate administration to sub-organizational units (role base authentication).	Security Mentor's solution support groups for which the state can provide sub-organizational units. For these groups, the State can provide a manager that will see training status for trainees in that group.
	The vendor's system must allow for the bulk configuration of employees.	Security Mentor is currently developing a bulk configuration utility for employees. Target release date is 07/2012.



Topic / Regulatory Subject	<p style="text-align: center;">Security Awareness Project Requirements</p>	<p style="text-align: center;">Security Mentor Response</p>
	<p>System must have ability to import users with the directory services of Microsoft Active Directory to aid in population of users.</p>	<p>Security Mentor has the ability to bulk import trainees.</p>
	<p>The vendor's solution must provide status notification message to employees when a class is available and when.</p>	<p>Security Mentor sends email notifications to employees when a new lesson is available. Each notification lists when a lesson is due.</p>
	<p>Solution must provide completion certificates</p>	<p>Security Mentor currently offers a completion certificate and is developing an automated delivery of completion certificates.</p>



Attachment B Cost Table

State of Michigan Pricing

Number of Trainee Users	Per-user Cost	Contract Value
50,000	\$3.59	\$179,500

- The license fee is \$3.59 per trainee for every trainee beyond the initial 50,000 State of Michigan trainees.
- The training term is 30 months.
- Training consists of Security Mentor CORE curriculum of twelve (12) lessons.
- Training will be provided through Security Mentor hosted service.
- 50,000 current staff will be rolled out in six (6) monthly rollouts For each rollout, the twelve (12) lessons will be released; one every other month over 24 months, allowing the last rollout to finish by month #30.
- New hires added after the start of a rollout will have the same training schedule as the rest of the trainees that are in the rollout.

MiDEAL Government User and University User Pricing

- Security Mentor will extend the State of Michigan pricing of a license fee of \$3.59 per trainee to MiDEAL Government Users and MiDEAL University Users.
- There is a one-time set-up fee of \$2,099 for each MiDEAL customer.
- The training term is 12 months.
- Training consists of Security Mentor CORE curriculum of twelve (12) lessons.
- Training will be provided through Security Mentor’s hosted service.
- Optional lesson content customization, branding of lesson player with customer’s logo, and other optional features will be charged at Security Mentor’s standard rate.
- Each customer will sign a License Agreement agreeing to the same terms offered as the State of Michigan without revision.

Private Entity Pricing

- Security Mentor will extend to Michigan Private Entities a 10% discount off Security Mentor then current standard price. A Michigan Private Entity is a business that is headquartered in or has a primary place of business in the State of Michigan.
- There is a minimum purchase price of \$2,195 per customer, after all discounts have been applied.
- The training term is 12 months.
- Training consists of Security Mentor CORE curriculum of twelve (12) lessons.
- Training will be provided through Security Mentor hosted service.
- Optional lesson content customization, branding of lesson player with customer’s logo, and other optional features will be charged at Security Mentor’s standard rate.
- Michigan Private Entities will sign Security Mentor’s standard License Agreement without revision.
- To get this discount, Michigan Private Entities must request Private Entity Pricing and refer to this Contract. Alternately, Security Mentor, at its discretion, may offer Private Entity Pricing without request.
- Security Mentor at its sole discretion may choose not to sell services to any potential customer.



Attachment C

Cyber-Security Awareness Training Solution and Hosting

1. Security Mentor Proposed Solution

Security Mentor hosted service provides a complete end-to-end training solution for the State of Michigan (hereafter referred to as “**State**”). State of Michigan employees simply come to Security Mentor’s website to take training. We do all the work: we provide and host the content, track the training status for each employee, and provide reports.

1.1 Security Mentor Lessons. Because every person learns differently, Security Mentor’s text-based lessons are self-navigated, allowing employees to taking training at their own optimal pace. This is a key advantage over audio (i.e. voice track) or video-based training where everyone has to go at a set pace determined by the courseware’s pace. To ensure the lesson content is viewed; employees must complete each lesson page before progressing in the lesson. Once a lesson is completed it can be taken again any time during the training term. And because it’s not always possible to complete a lesson in one sitting, Trainees can close a lesson and reopen it later where they last left off; this is also called bookmarking.

Unlike much traditional web-based training, Security Mentor’s lessons are custom-designed, hand-crafted, and based on Instructional Design principles. Security Mentor lessons use games and interactions that promote learning by doing. Rather than just reading about security, trainees interact with games, quizzes, and scenarios that present realistic information in an interactive, engaging manner, while reinforcing the desired behavior.

1.2 Security Mentor Training Service. To start training, Security Mentor will provide the State with several start-up documents which describe how training works and the data that we need. The State will initially provide Security Mentor with a file containing trainee data and, optionally, group and manager data. Then, upon commencement of the training program, Security Mentor will send a unique email to each trainee with instructions on how to create his/her Security Mentor account and take the first lesson.

Each month thereafter, Security Mentor will email a notice to each employee announcing the new security awareness lesson. Employees will sign in to the Security Mentor website and take their new lesson.

If an employee is late in completing a lesson, Security Mentor will automatically send a past due notice. The State can configure the past due notices, including the number of notices and frequency. Training administrators and managers can view the status of employees by signing in to their Security Mentor account and accessing graphical or tabular reports of training status including activation, past due and completed lessons. Each Security Mentor report can be exported as a Comma Separated Value (CSV) file.

2. Security Mentor Lessons and Curriculum

Security Mentor CORE. Security Mentor will provide the State’s employees with 12 security awareness lessons, each addressing a different critical security awareness topic. Over the 24-month training period, employees will take the Security Mentor CORE curriculum comprised of the following security awareness topics:

-  Intro to Security Awareness
-  Office Security
-  Computer Security



-  Passwords
-  Email Security
-  Web Security
-  Phishing
-  Social Networking
-  Mobile Security
-  Public WiFi
-  Reporting Incidents
-  Information Protection

Security Mentor ADVANCED. In 2012, Security Mentor is developing a follow-on curriculum of six additional lessons. If the State decides to continue training with Security Mentor for a second year, the State may select any of these lessons to be included as one of the twelve lessons provided to employees.

-  Social Engineering
-  Insider Threat
-  Safe Disposal
-  Privacy
-  Working Remotely
-  Travel Security

3. Roles and Responsibilities

As requested in the RFP (Article 1.104), Security Mentor's and the State's responsibilities are outlined below.

Security Mentor Responsibilities:

- Provide start-up documents to the State.
- Ingest trainee data into Security Mentor's system and create training accounts.
- Send email notifications to trainees including activation, new lesson, and past due notices.
- Provide a trainee web account interface for the State's employees to take training.
- Provide an administrative interface for managers to view and/or download reports of training status.

State Responsibilities:

- Provide Security Mentor with roll-out schedule for staggering training of 50,000 State employees
- For each roll-out period, provide to Security Mentor a bulk digital file containing employee data in the specified format
- Develop an internal process for monitoring employee data and at regular intervals, provide Security Mentor with bulk computer file with updates for new hires, departures, or changed employee data.

4. Security Mentor Features

Security Mentor training is the highest quality training, most effective training available. Here are a few of the key features that help set us apart:

Security Mentor Training Features

- Rich production value lessons are engaging, interactive and fun to take
- Each lesson has interactions, quizzes, or games that promote learning by doing
- Brief, single-topic lessons fit into busy work schedules and are easy to learn and remember
- Lessons are self-navigated so each trainee takes training at their own, optimal pace



- Lessons are intuitive and simple to take
- Robust security content developed by security professionals is presented in a casual, readily understood style
- Each lesson is custom-designed for the specific security topic, training is not boilerplate
- Lessons can be stopped and restarted in the same place at a later time (i.e. bookmarking)
- Lessons are text-based, no audio or video is required; minimizing impact on co-workers and avoiding the necessity of special hardware

Security Mentor Website Features

- Web-based training is available 24x7x365
- User authentication, training content and training data are transmitted over SSL
- Passwords are easily reset by trainees themselves in a secure, automated manner
- Security Mentor automates the sending of email notifications to trainees for account activation, new lessons, and past due lessons. No Customer interaction is required
- State Administrators and Managers can generate and download reports on trainee activation as well as lesson completion status
- Trainee record can include a "group" field which can contain location and/or department string, allowing for sorting and filtering on this field



Appendix D Additional Terms and Conditions

In addition to the Terms and Conditions within Article 2, the following terms are hereby incorporated into the Contract:

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

Content: Any and all materials made available by Security Mentor in connection with the Service, including but not limited to Adobe® swf and pdf files, text, data, still and moving images, photographs, illustrations, graphics, video, audio, documentation, and any and all information relating thereto.

Client Software: Any and all software provided by Security Mentor to the State to run on the State's computing devices as part of the use of the Service, including any and all updates and releases to such software provided to the State by Security Mentor at Security Mentor's discretion.

Curriculum: A package of lessons grouped together by topic or custom selection. The Curriculum licensed by the State is identified on Exhibit A.

State Employee: An employee of the State or its affiliate, or employee of a business entity acting on behalf of the State, provided that the State has authority to bind all such employees and entities to the terms and conditions of this Agreement.

Initial Term: The period of time designated as the Initial Term on Exhibit A.

Renewal License: License for a Training Subscription that is renewed for a Renewal Term.

Renewal Term: Each successive term with the same duration as the Initial Term during which this Agreement remains in effect.

Service: Security Mentor's hosted security awareness training service, including, but not limited to, the Content, Software, Website, and the associated services, information, and documentation.

Software: The Client Software and other software through which the Service is provided including, but not limited to, server software and the Website.

Term: The Initial Term and any and all Renewal Terms.

Training Subscription License: The grant of use of the Service for one User, including taking lessons in a Curriculum, between the start and end dates of the Initial or Renewal Term.

User: State Employee for whom: 1) the State has a licensed Training Subscription to use the Service and 2) there is a User Account.

User Account: A unique authenticated user login account on the Service providing access to and use of the Service. Each User Account requires an email address at the State's domain name, not a personal email address.

Website: Security Mentor's website, currently at the address of www.securitymentor.com.

2. Grant of Rights and Restrictions.

2.1 Grant of Rights. Pursuant to the terms and conditions of this Agreement, and during the Terms, Security Mentor hereby grants the State a limited, non-exclusive, non-transferable, worldwide, non-sublicensable right to use the Service by their employees for whom they have purchased a training subscription license, solely for the State's security training of employees.

2.2 Closed User Account. The State shall notify Security Mentor of all Users whose account should be closed because they: (i) are no longer in the employ of the State, or (ii) should otherwise be permanently removed from training. Such request shall include the User's name and email address, and if applicable, the group name and group manager's email address. Security Mentor will then close the respective User Accounts ("**Closed User Account**").



3. General Restrictions.

Security Mentor and its licensors reserve all rights in and to the Service. Other than as expressly provided in the Grant, the State shall NOT, nor shall any third party service provider used by the State, directly or indirectly:

- (i) capture, copy, edit, modify the Content or Service; or
- (ii) disclose, distribute, disseminate, publish, assign, license, rent, lease, loan, sell or otherwise commercially exploit or make available to any third party the Service in any way, including timesharing, service bureau or other arrangement; or
- (iii) reverse engineer, decompile, disassemble the Service or otherwise attempt to derive the source code; or
- (iv) other than for security training of Users, use the Courseware for any reason, including for the purpose of (a) building a competitive product or service, (b) building a product using similar ideas, features, functions, or content of the Service, or (c) copying any ideas, features, functions, or content of the Service; or
- (v) modify, translate or make derivative works in whole or in part based upon the Service, including removal or obliteration of any proprietary notice or any credit-line or date-line included in the Service; or
- (vi) disclose the results of any benchmark tests of the Service, including any of the Software, without Security Mentor's prior written consent.

4. User Restrictions.

Each individual that the State permits to access and use the Service must be assigned a User Account, including a unique user identification and password and will be considered an authorized User of the Service. The State may not permit more than one person to use a single login account or unique user identification and password to access and use the Service or otherwise share login accounts, user identifications, or passwords. The State may not permit non-Users to view content, including shared viewing of the Content with Users.

5. Confidential Information.

5.1 Service. The State agrees that the Content, and other parts of the Service, are confidential and proprietary property of Security Mentor and its licensors. The State agrees not to use the Content or Service other than as expressly permitted by Security Mentor, or disclose any of the Content or Service to any person that is not a User under this Agreement or to third parties.

6. Control of Data.

Security Mentor acknowledges that it does not attain ownership in any data, information or material that the State submits to the Service in the course of using the Service ("**State Data**"). The State, not Security Mentor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all the State's Data. The State agrees and acknowledges that Security Mentor may use, reproduce and store the State Data for the purpose of providing the Service to the State. Security Mentor has no obligation to retain the State Data, and the State's Data may be irretrievably deleted if the State's account is ninety (90) days or more delinquent.

7. Intellectual Property Ownership.

Security Mentor alone (and its licensors, where applicable) exclusively retain all patent, design right, copyright, trademark, service mark, database right, trade secret, know-how and/or other present or future intellectual property right of any type (and any application or registration respecting the foregoing), wherever in the world enjoyable (collectively "**Intellectual Property Rights**"), in and to the Service (including all Content and Software) and any portion and all compilations thereof, including other technology used by Security Mentor to provide the Service, and the trademarks, service marks, and trade names, whether or not registered, identifying or used in connection with the subject matter of this Agreement (collectively the "**Marks**" exclusive of the State's Marks). Without limiting the foregoing, the State acknowledges that Security Mentor's lessons, and portions thereof, including but not limited to, the lesson storyline, design, layout, text, graphics, interactions and the selection, coordination and arrangement of content, are owned by Security Mentor and/or its licensors and are protected by U.S. and international copyright law and international treaties. All rights reserved. Use and disclosure of such content and materials are only as allowed by this License Agreement, regardless of whether such content and materials qualify as Confidential Information.



Security Mentor may use any and all feedback and survey responses provided by the State regarding the Service, without obligation or liability, provided that Security Mentor complies with Section 2.100 with regard to any Confidential Information of the State.

The Security Mentor name, the Security Mentor logo, and the product names associated with the Service are trademarks of Security Mentor or third parties, and no right or license is granted to use them. This Agreement is not a sale and does not convey to the State any rights of ownership in or related to the Service, any other Security Mentor technology, or the intellectual property rights owned by Security Mentor. The State acknowledges that, except as specifically provided under this Agreement, no other right, title, or interest in these items is granted.

8. Service Level Agreement.

8.1 Availability. The State acknowledges and agrees that temporary interruptions of the Service may occur from time to time. Subject to the terms and conditions of the Contract, Security Mentor will use commercially reasonable efforts to make the Service available to the State 97% of the time in any month. **Availability** will be calculated as Uptime divided by the Total Time, where **Uptime** is defined as the minutes that the service is available per month including Scheduled Maintenance (see Section 8.4) and **Total Time** is defined as the total minutes in that month. Security Mentor does not warrant that the State's use of the Service will be error-free or uninterrupted. **Downtime** (Total Time minus Uptime) begins when the State reports a Service Outage (see Section 8.3) to Security Mentor. In the event that Security Mentor fails to meet 98%-Availability, then, as Security Mentor's sole financial liability, and the State's sole financial remedy and subject to State's written request within thirty (30) days of the end of the month in which such failure occurred ("**Affected Month**"), Security Mentor will issue a credit in the next invoice to the State equivalent to the amount of the License Fees for the Affected Month that is proportional to the period of Downtime that exceeds 2% ("**Downtime Credit**"). For example, if Downtime was 5% for the Affected Month, then the Downtime Credit will be 2% of the License Fees paid for the Affected Month. However, the Downtime Credit shall be no greater than (20%) of the Affected Month's License Fees.

8.2 Remedies. Other than the remedy set forth above and the State's right to terminate as otherwise provided in this Contract, State's sole and exclusive remedy for Security Mentor's failure to meet the Availability requirement is, upon State's notice of non-conformance, for Security Mentor to use commercially reasonable efforts to correct such non-conformance.

8.3 Service Outages. If State is unable to access the Service, State will report the date, time, and IP address of workstation/network experiencing the Service access disruption, and nature of the outage as soon as practical to Security Mentor through Security Mentor's standard customer support process.

8.4 Scheduled Maintenance. The State acknowledges and agrees that Security Mentor may interrupt the Service as Security Mentor deems necessary in order to maintain, repair, restructure or make adjustments to the Service. Security Mentor will use commercially reasonable efforts to provide the State prior notice of any prolonged service interruptions. Security Mentor will strive to schedule maintenance during non-business hours; however at times this may not be possible. Any scheduled maintenance within business hours requires three business days' advance notice to the State, unless there exists a critical maintenance event, such as a security issue or critical error with content or service.

8.5 Restrictions. This Service Level Agreement covers service outages affected by technologies and circumstances under the control of Security Mentor including Security Mentor-managed connectivity to the Internet, Security Mentor routers, and Security Mentor servers and data center LANs, and Security Mentor software. This Service Level Agreement does not apply to service outages caused by or associated with:

- (i) Circumstances beyond the reasonable control of Security Mentor, including, without limitation, acts of God, acts of any governmental body, war, insurrection, sabotage, terrorism, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Service; or
- (ii) Failure of access circuits to the Security Mentor network, unless such failure is caused solely by Security Mentor; or
- (iii) Outages elsewhere on the Internet that hinder access to a hosted account; or
- (iv) The State's (or any User's) acts or omissions and any negligence, willful misconduct, or use of the Services in breach of this Contract.



9. Support.

The State is solely responsible for support of its Users with respect to the Service. Notwithstanding the foregoing, Security Mentor shall use commercially reasonable efforts to support the State in resolving issues for User Accounts and Lessons with respect to the Service between the hours of 8:00 am to 5:00 pm, Pacific Time, Monday through Friday, excluding U.S. federal holidays, but has no obligation to provide the State with hard-copy documentation, upgrades, enhancements, modifications, or other support unless specifically contracted for by the State.

10. Modifications and Changes to Service.

Security Mentor reserves the right to modify the Service at its discretion, including without limitation modification, additions or deletions of features, functionalities, and content available through the Service. Security Mentor will use commercially reasonable efforts to notify the State of any material changes which may adversely affect the State's ability to access the Service.

11. Liability and Remedies.

11.1. Total Liability. Security Mentor's liability for damages to the State is limited to two times the value of the Contract, or [\$500,000], whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of Security Mentor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

11.2 Certain Remedies. In addition to any remedies available in law, if Security Mentor breaches any of the warranties contained in Section 2.120 of the RFP, the breach may be considered as a default in the performance of a material obligation of this Contract. The State agrees, however, that (a) Security Mentor's sole and exclusive financial liability, and the State's sole and exclusive financial remedy, for breach of the No Surreptitious Code Warranty of the RFP is for Security Mentor to provide the indemnification as set forth in Section 2.142 of the RFP, and (b) Security Mentor's sole and exclusive financial liability, and the State's sole and exclusive financial remedy, for breach of Section 2.121(c) of the RFP is for Security Mentor to provide the indemnification as set forth in Section 2.144 – 2.146 of the RFP.

12. Disclaimer.

SECURITY MENTOR AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE. SECURITY MENTOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT:

- (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA,
- (B) THE SERVICE WILL MEET THE STATE'S REQUIREMENTS OR EXPECTATIONS, OR ENSURE THE STATE'S COMPLIANCE WITH ANY APPLICABLE LAWS, RULES OR REGULATIONS,
- (C) THE SERVICE WILL CHANGE BEHAVIOR OF USERS,
- (D) ANY STORED DATA WILL BE ACCURATE, RELIABLE, ARCHIVED OR ACCESSIBLE,
- (E) THE QUALITY OF ANY PRODUCTS, CONTENT, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE STATE THROUGH THE SERVICE WILL MEET THE STATE'S REQUIREMENTS OR EXPECTATIONS,
- (F) ERRORS OR DEFECTS WILL BE CORRECTED, OR
- (G) THE SERVICE, OR THE SERVER(S) OR OTHER TECHNOLOGY THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

SECURITY MENTOR MAY PROVIDE SUGGESTIONS REGARDING, AND/OR THE WEB SITE OR LESSONS MAY CONTAIN LINKS TO, THIRD PARTY SOFTWARE, HARDWARE, SERVICES, OR INTERNET SITES. (**"EXTERNAL SOURCES"**). THE STATE ACKNOWLEDGES THAT SECURITY MENTOR DOES NOT ENDORSE AND IS NOT



RESPONSIBLE FOR THE AVAILABILITY OF, FUNCTIONALITY OF, PERFORMANCE OF, SECURITY OF, OR THE CONTENT CONTAINED IN OR LOCATED ON OR THROUGH, ANY EXTERNAL SOURCE. THE STATE ASSUMES THE RESPONSIBILITY OF, AND ANY COSTS OR LIABILITY ASSOCIATED WITH, USING ANY EXTERNAL SOURCE OR MAKING A CONNECTION (BY ANY MEANS) TO THE INTERNET, OR OTHER ONLINE SERVICE, OR NETWORK, OR USING ANY THIRD PARTY PRODUCT OR SERVICE.

THE SERVICE IS PROVIDED TO THE STATE STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY SECURITY MENTOR AND ITS LICENSORS.

13. Effect of Termination.

Upon any termination of this Agreement, the State will have no right to access or use the Service and the State must immediately permanently delete, or otherwise remove or destroy the Client Software stored or otherwise in its possession, custody or control, and if applicable allow Security Mentor or its nominees to access the State's Installation Address to remove Security Mentor's Client Software so that it is no longer in the State's possession or control.

14. Security Mentor Website Terms of Service.

The State expressly acknowledges and agrees to the following Security Mentor Terms of Service and Privacy Policy:

----- Beginning of Security Mentor Web Site Terms of Service -----

These terms of use (the "Terms of Use," "Terms" or the "Agreement") provide the terms and conditions under which Security Mentor, Inc. ("Security Mentor") provides you with access to its security training service (the "Service") through Security Mentor's website (the "Site"). **Please read the Terms carefully before using the Site and/or Service, as your use of the Service will signify your assent to be bound by these Terms, which include limitations of Security Mentor's liability. IF YOU DO NOT AGREE WITH THESE TERMS OF USE, YOU ARE NOT AUTHORIZED TO USE THE SITE OR SERVICE.**

These Terms apply to your use of the Site and Service unless your employer (the "Company") has an express written agreement with Security Mentor regarding such use, in which case, if that agreement conflicts with these Terms, then that agreement controls and governs such use.

1. **Authorized Use.** You are authorized to use this Service only as part of security awareness training service contracted by the Company from Security Mentor, or as part of a trial on behalf of the Company to assess whether to purchase Security Mentor's training service. You are only permitted to use the Service for the time period designated in the applicable agreement between Security Mentor and the Company ("Service Period"). You represent that you are authorized to accept these Terms on Company's behalf and that Company will be bound by and be responsible for your acts and representations in connection with the Site or Service. You must not share your login account or user identification or password with anyone else. You agree that you have provided to Security Mentor, and will maintain during the Service Period, current, complete and accurate registration information for the Service. Use of the Site or the Service for any unauthorized purpose whatsoever is ground for termination of your account.
2. **Modifications.** You understand and agree that Security Mentor may, at any time, change or discontinue any feature of the Service and/or Site, including content, availability, equipment needed for access to the service, and/or any upgrades to the software. Furthermore, Security Mentor reserves the right, in its sole discretion, to modify, alter or otherwise update this Agreement at any time, without notice to you, and you agree to be bound by such modifications, alterations or updates. Please check the Terms of Use on the Site periodically for any such modifications, alterations, or updates. Your continued use of the Site and/or Service shall be deemed your acceptance of the modified, altered or updated Agreement.
3. **Intellectual Property.** The Service and all information relating thereto are confidential and proprietary property of Security Mentor and its licensors. Security Mentor alone (and its licensors, where applicable) exclusively retain all intellectual property and proprietary right of any type to the Site and the Service (including all content and software used to provide the Service). The Security Mentor name, the Security Mentor logo, and the product names associated with the Service are trademarks of Security Mentor or third parties, and no right or license is granted to use them. Security Mentor shall be free to use and exploit in any way, and may assign and transfer such rights, any and all suggestions, ideas, enhancement



requests, feedback, recommendations or other information you provide Security Mentor without obligation or liability, including payment of any royalties or other fees.

4. **Your Responsibilities.** You agree to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with use of the Service, including those related to data privacy, international communications the transmission of technical or personal data and export control laws. You shall notify Security Mentor immediately of any unauthorized use of any password or account or any other known or suspected breach of security.
5. **Privacy Policy.** By using this Site or the Service, you agree to Security Mentor's Privacy Policy and its terms which are incorporated by reference in these Terms.
6. **License.** Pursuant to the terms and conditions of this Agreement, and during the Service Period, Security Mentor grants you a limited, nonexclusive, nontransferable, worldwide, non-sublicensable license to use the Service, solely for Company's internal training or internal trial and evaluation of the Service to determine whether Company wishes to purchase a license to the Service. No use for productive purposes or deployment of the Service in any commercial application or in the operation of Company's or any other entity's business is permitted.
7. **Restrictions.** You may not, nor may you permit anyone else to:
 - a. capture, copy, edit, modify, translate, transmit, disclose, distribute, disseminate, publish, assign, license, rent, lease, loan, sell or otherwise commercially exploit or make available to any third party or to employees or other persons, the Service in any way, including any of the materials or content made available through the Services including but not limited to Adobe® swf and pdf files, text, data, still and moving images, photographs, illustrations, graphics, video, audio, documentation (collectively, "Content") or software through which Security Mentor provides the Service ("Software"); or
 - b. remove, conceal or obliterate any copyright, Security Mentor logo, or other proprietary notice or any credit-line included on Content; or
 - c. reverse engineer, decompile, disassemble or otherwise attempt to access the source code for any of the Software; access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions, or content of the Service, or (c) copy any ideas, features, functions, or other Content of the Service; or modify or make derivative works based upon the Service; or
 - d. disclose the results of any benchmark tests of the Software or the Services without Security Mentor's prior written consent.
8. **Termination.** This Agreement is effective for the Service Period unless earlier terminated by Company or Security Mentor. Security Mentor may terminate your access to the Service immediately if you fail to comply with any of these Terms. At the end of the Service Period or upon the request of Security Mentor, whichever is earlier, you will promptly remove all Software, Content and other vestiges of the Service from Company's and your computer systems, destroy all related files and documentation, and make no further use whatsoever of the Service, except to the extent that may be permitted under any subsequent written agreements between Company and Security Mentor.
9. **DISCLAIMER OF WARRANTIES; LIABILITY LIMITATIONS.** UNLESS OTHERWISE EXPRESSLY PROVIDED IN SECURITY MENTOR'S WRITTEN AGREEMENT WITH CUSTOMER, OR AS REQUIRED UNDER APPLICABLE LAW:
 - a. THE SERVICE IS PROVIDED "AS IS", AND SECURITY MENTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.
 - b. IN NO EVENT SHALL SECURITY MENTOR OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOSS OF PROFITS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA OR FOR ANY OTHER DAMAGES OR LOSSES OF ANY NATURE. 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, disclosure of personal information, or damage to property caused by the gross negligence or willful misconduct of the Contractor, AND

- c. IN NO EVENT WILL SECURITY MENTOR'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT BE ANY GREATER THAN THE LIST PRICE SECURITY MENTOR CHARGES FOR A LICENSE TO THE SERVICE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT.

10. Miscellaneous. You may not assign or transfer this Agreement nor any rights or obligations under this Agreement, in whole or in part. If any provision of this Agreement is unenforceable, then it will be construed, as nearly as possible, to reflect the intentions of such provision, and all other provisions remain in full force and effect. No waiver is valid unless in writing and signed by Security Mentor. This Agreement is the entire agreement of the parties and replaces any other understandings or agreements (whether oral or written) between the parties regarding the Service. Unless this Agreement states otherwise, this Agreement may be modified only in writing and signed by an authorized representative of Security Mentor.

----- End of Security Mentor Web Site Terms of Service -----

14. Security Mentor Website Privacy Policy

----- Beginning of Security Mentor Web Site Privacy Policy -----

At **Security Mentor, Inc.** ("Security Mentor", or "we," "us," or "our"), we respect the importance of your privacy, and we are committed to taking steps to ensure that your personally identifiable information is kept confidential. We believe that you should know what information about you is collected when you use the Security Mentor website (the "Site"), including our training services provided through the Site ("Services"), as well as how that information is used, maintained and, in some cases, shared. Therefore, we have created this Privacy Policy to set forth our privacy practices and policies.

BY USING OR ACCESSING IN ANY WAY THE SITE AND/OR OUR SERVICES AVAILABLE THROUGH THE SITE, OR BY TRANSMITTING INFORMATION TO US BY EMAIL OR OTHER ELECTRONIC MEANS, YOU TO THIS PRIVACY POLICY. IF YOU DO NOT AGREE WITH THE TERMS OF THIS PRIVACY POLICY, PLEASE DO NOT USE THE SITE OR SERVICES, OR OTHERWISE ENGAGE IN THESE ACTIVITIES.

INFORMATION COLLECTION AND USE

When you register with the Site or you wish to use the Services available through the Site, it is necessary for us to collect certain personally-identifiable information from you:

- **Information Requests.** When you request information about Services, we collect and store the information provided about you in order to address your questions, and for enhancement of Services.
- **User Information.** When you use our Services, we are provided basic information about you (including your first and last name, email address, IP address, and company you work for) in order to register as an authorized user of the Service.
- **Tracking Use of the Service.** We may monitor and track your use of the Service, including lesson completion status and interaction results.
- **Evaluation and Feedback.** We may from time to time, including upon completion of a lesson, request you to evaluate our Services. The completion of this evaluation is at your discretion.

INFORMATION USE AND DISCLOSURE

- **No Selling of Your Personally Identifiable Information.** We will not sell your personally identifiable information to a third party, nor will we provide it to a third party for such third party's marketing purposes unless we have your written consent.
- **Communications.** We will store your contact information in connection with your use of the Services and will share it with our Service Providers who need it to provide the Services. We may send emails and other



communications to you relating to your account and use of the Service, including lesson release, lesson status and response to support requests.

- **Service Providers.** Security Mentor uses Service Providers to perform certain of the hosting, technical processing, administration and support of the Site and Services. Unless we notify you of other privacy terms that would apply to a specific Service, such Service Providers are permitted to use and disclose your personally identifiable information only as provided in this Privacy Policy.
- **Feedback.** If you choose to complete our surveys or otherwise provide your feedback to Security Mentor, your evaluation will be shared with relevant members of our team, and with our Service Provider(s) who process statistical information, but not with any other third party. If you provide us with your own comments about our Services, we may use your comments in our marketing and promotional materials and/or on the Site but we will not attribute your comments to you unless you give us express permission to do so.
- **Others.** We will comply with subpoenas, court orders or other legal processes for any of the information about you in our possession, and we may use such information to establish or exercise our legal rights, or to defend against legal claims. We reserve the right to disclose information about you, including data on which Services you have used or which Site pages you have visited, to third parties if we feel it is necessary to protect our systems, Site, Services, business, users or others.

COOKIES AND LOG FILES

We use and store cookies to maintain your session when you use the Service.

In addition, as is true of most websites, Security Mentor and/or its Service Providers gather and store certain information about your use of the Site and/or Services, including internet protocol (IP) addresses, browser type, Internet service provider (ISP) information, referring/exit pages, operating system information, date/time stamps, and clickstream data. We and our Service Providers use this information to analyze trends, to administer the Site and Services, to track users' movements around the Site and Services, and to gather demographic information about our user base in aggregate. We do not link this automatically-collected data to personally identifiable information.

LINKS TO OTHER SITES. The Site contains links to third party sites that are not owned or controlled by us. We are not responsible for the privacy practices of such other sites. We encourage you to be aware when you leave our site and to read the privacy statements of each and every website that collects personally identifiable information. This Privacy Policy applies only to information collected, retained and accessed by the Site, including Services available through the Site. In addition, certain Service Providers may have their own privacy policies that will apply to certain services, as described above.

SECURITY. The security of your personal information is important to us. Security Mentor follows generally accepted industry standards to protect the personal information submitted to us, both during transmission and once we receive it. However, no method of transmission over the Internet, or method of electronic storage, is 100% secure. While we cannot, therefore, guarantee the absolute security of anything transmitted via the Internet, Security Mentor does use commercially acceptable means to protect your personal information. Note that emails sent to or from the Service are unencrypted and can potentially be read by others. If you have any questions about security on our Website, you are always welcome to contact us at info@securitymentor.com.

BUSINESS TRANSITION. In the event that Security Mentor goes through a business transition, such as a merger, acquisition by another company, or sale of all or a portion of its assets, your information (including your personally identifiable information) will likely be among the assets transferred. Security Mentor cannot guarantee that any entity receiving such information in connection with one of these transactions will comply with all terms of this Privacy Policy.

CONSENT TO TRANSFER AND PROCESSING. Personal information collected through the Site and/or its Services may be stored and processed in the United States or in any other country in which Security Mentor or its Service Providers (or its or their affiliates or providers) maintain facilities. By using the Site and/or its Services, you consent to any such transfer and processing of information outside of your country.



CHILDREN'S PRIVACY. If you are under the age of 13, please do not use or access the Site or Services in any way. We will not knowingly collect or use any personal information from any children under the age of 13. If we become aware that we have collected any personal information from children under 13, we will promptly delete such information from our databases.

UPDATING YOUR INFORMATION; QUESTIONS. You may view your personal account information online by accessing your account for the Site at www.securitymentor.com/auth/login, using your login account information for the Site. Please feel free to contact us at info@securitymentor.com, to assist in updating your personal information or if you have any questions regarding this Privacy Policy.

----- End of Security Mentor Web Site Privacy Policy -----



Appendix E

Contractor Staff, Roles, And Responsibilities

Contractor Single Point of Contact (SPOC) Marie E. White

Resumes

Marie E. White – Founder, CEO & President

5% of time assigned to State of Michigan contract

Dr. Marie White, co-founder of Security Mentor, Inc., has amassed a wide range of experience in security, technology, business, and science.

In 2007, Dr. Marie White co-founded Security Mentor. Dr. White is an entrepreneur, business executive, security professional and training expert. In addition to her leadership role in Security Mentor, Dr. White is actively involved in the development of Security Mentor's training.

Prior to Security Mentor, Dr. White co-founded PIM Technology, LLC, an information security and information technology consultancy, in 1995. PIM Technology, LLC specialized in web application security and development, authentication and authorization.

Dr. White has more than 15 years of management experience with Security Mentor and PIM Technology. Dr. White holds a Doctor of Philosophy and Masters in Oceanography from Texas A&M University. She also holds certifications as a Certified Information Systems Auditor (CISA) and Certified Information Systems Security Professional (CISSP).

Craig Kunitani – Founder, COO & CTO

3% of time assigned to State of Michigan contract

Mr. Craig Kunitani is a co-founder of Security Mentor, Inc. Mr. Kunitani manages the operations and technology direction of the company. Mr. Kunitani has nearly three decades of experience in the information security, computer industry, and physical sciences. His contributions have been as a researcher, software developer/engineer, and manager. He was a co-founder of PIM Technology, LLC, an information security and information technology consultancy servicing the United States Navy and defense contractors.

Mr. Kunitani holds certification as a Certified Information Systems Security Professional (CISSP) and earned a Masters in Atmospheric Science from the University of Wisconsin-Madison, and a Bachelors in Statistics from University of California-Berkeley.