



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **071B3200092**

<b>CONTRACTOR</b>	WHEELS INC
	666 Garland Place
	Des Plaines, IL 60016
	Jack Leffler
	224-567-1394
	jleffler@wheels.com
	CV0017028

<b>STATE</b>	<b>Program Manager</b>	Roy Cischke	DTMB
		517-322-5148	
		cischker@Michigan.gov	
	<b>Contract Administrator</b>	Yvon Dufour	DTMB
		(517) 284-6996	
		dufoury@michigan.gov	

<b>CONTRACT SUMMARY</b>				
<b>FLEET MANAGEMENT SERVICES</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
May 8, 2013	September 30, 2018	3 - 1 Year	September 30, 2019	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>MINIMUM DELIVERY REQUIREMENTS</b>				
<b>DESCRIPTION OF CHANGE NOTICE</b>				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 years	<input type="checkbox"/>		September 30, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$385,268,910.00	\$150,000,000.00	\$535,268,910.00		
<b>DESCRIPTION</b>				
Effective 9/26/2019, this contract is exercising the second and third option years and is increased by \$150,000,000. The revised contract expiration date is 9/30/2021. All other terms, conditions, specifications and pricing remain the same. Per DTMB request, DTMB Procurement approval, and State Administrative Board approval on 9/26/2019.				



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

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

**CONTRACT CHANGE NOTICE**

Change Notice Number 2  
to  
Contract Number 071B3200092

<b>CONTRACTOR</b>	WHEELS INC
	666 Garland Place
	Des Plaines, IL 60016
	Jack Leffler
	224-567-1394
	jleffler@wheels.com
	CV0017028

<b>STATE</b>	<b>Program Manager</b>	Roy Cischke	DTMB
		517-322-5148	
		cischker@Michigan.gov	
	<b>Contract Administrator</b>	Yvon Dufour	DTMB
		(517) 249-0455	
		dufour@michigan.gov	

<b>CONTRACT SUMMARY</b>				
<b>FLEET MANAGEMENT SERVICES</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 8, 2013	September 30, 2018	3 - 1 Year	September 30, 2018	
PAYMENT TERMS		DELIVERY TIMEFRAME		
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	
<b>MINIMUM DELIVERY REQUIREMENTS</b>				
<b>DESCRIPTION OF CHANGE NOTICE</b>				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	one year	<input type="checkbox"/>		September 30, 2019
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$315,268,910.00	\$70,000,000.00	\$385,268,910.00		
<b>DESCRIPTION</b>				
Effective 5/8/2018, this contract is exercising the first option year and is increased by \$70,000,000. The revised contract expiration date is 9/30/2019. All other terms, conditions, specifications and pricing remain the same. Per DTMB request, DTMB Procurement approval, and State Administrative Board approval on 5/8/2018.				



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

**CONTRACT CHANGE NOTICE**

Change Notice Number 1  
 to  
 Contract Number 071B3200092

<b>CONTRACTOR</b>	WHEELS INC
	666 Garland Place
	Des Plaines, IL 60016
	Jack Leffler
	224-567-1394
	jleffler@wheels.com
	*****7983

<b>STATE</b>	<b>Program Manager</b>	Roy Cischke	DTMB
		517-322-5148	
		cischker@Michigan.gov	
	<b>Contract Administrator</b>	Yvon Dufour	DTMB
		(517) 284-6996	
		dufoury@michigan.gov	

**CONTRACT SUMMARY**

<b>FLEET MANAGEMENT SERVICES</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
May 8, 2013	September 30, 2018	3 - 1 Year	September 30, 2018
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
<b>ALTERNATE PAYMENT OPTIONS</b>		<b>EXTENDED PURCHASING</b>	
<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**

<b>DESCRIPTION OF CHANGE NOTICE</b>				
<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input type="checkbox"/>		<input type="checkbox"/>		September 30, 2018
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$315,218,910.00	\$0.00	\$315,218,910.00		

**DESCRIPTION**

Please note the Contractor Contact has been changed to Jack Leffler. All other terms, conditions, specifications and pricing remain the same. Per agency request, 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 48933

May 8, 2013

**NOTICE  
 OF  
 CONTRACT NO. 071B3200092**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Wheels Inc. 666 Garland Place Des Plaines, IL 60016	Scott Pattullo	<a href="mailto:spattullo@wheels.com">spattullo@wheels.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(847) 768-5579	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Roy Cischke	517-322-5148	<a href="mailto:cischker@michigan.gov">cischker@michigan.gov</a>
BUYER:	DTMB	Jim Wilson	517-241-1916	<a href="mailto:Wilsonj6@michigan.gov">Wilsonj6@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)</b>			
Fleet Management Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years, 5 months	May 8, 2013	September 30, 2018	3, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			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
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$315,268,910.00	

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

**CONTRACT NO. 071B3200092**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Wheels Inc. 666 Garland Place Des Plaines, IL 60016	Scott Pattullo	<a href="mailto:spattullo@wheels.com">spattullo@wheels.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(847) 768-5579	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Roy Cischke	517-322-5148	<a href="mailto:cischker@michigan.gov">cischker@michigan.gov</a>
BUYER:	DTMB	Jim Wilson	517-241-1916	<a href="mailto:Wilsonj6@michigan.gov">Wilsonj6@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b> Descriptive Contract Title (Not always the same language as provided in MAIN)			
Fleet Management Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years, 5 months	May 8, 2013	September 30, 2018	3, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			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
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$315,268,910.00	

**THIS IS NOT AN ORDER:** Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

**Notice of Contract #: 071B3200092**

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
Wheels Inc.	Signature
Firm Name	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
Date	Date



**STATE OF MICHIGAN**  
**Department of Technology, Management and Budget**  
**DTMB-Procurement**

Contract No. [071B3200092](#)  
Fleet Management Services

Buyer: Jim Wilson  
517-241-1916  
[wilsonj4@michigan.gov](mailto:wilsonj4@michigan.gov)



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Attachment A, Pricing: Total Cost of Ownership



## DEFINITIONS

**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 within the scope of the Contract, but not specifically provided under any Statement of Work.

**Agency**, or **State Agency**, means an organizational unit within the executive branch of state government.

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

**Base Purchase Price** means the manufacturer invoice.

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

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

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

**CCI** means Contract Compliance Inspector.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

**Seasonal Vehicles** means vehicles that are used by the State of Michigan for less than 12 months to fill cyclical needs of state agencies.

**Services** means any of the functions and responsibilities to be provided directly by the Contractor under the Contract. Services shall not include the manufacturing of vehicles or the performance of repairs on such vehicles.

**SLA** means Service Level Agreement.

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

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

**Stipulated Cost** means the base purchase price of the vehicle plus or minus Contractor adjustments and minus government assistance.

**Subcontractor** means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

**Unauthorized Removal** means the Contractor's removal of Key Personnel without the prior written consent of the State.

**VTS** means Vehicle and Travel Services.

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

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

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

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



## **Article 1 – Statement of Work (SOW)**

### **1.010 Project Identification**

#### **1.011 Project Request**

This is a Contract for the provision of vehicles and an array of associated fleet management services.

The products and services desired by the State include the following: new and used vehicles, vehicle selection and acquisition services, vehicle capital cost financing, vehicle maintenance and repair and associated vendor management and payment services, accident management and subrogation services, vehicle remarketing services, provision of seasonal-use vehicles, provision and management of a commercial fuel card, and management analysis and reporting tools and services.

#### **1.012 Background**

The Vehicle and Travel Services Division (VTS) of the Office of Support Services (OSS) of the Department of Technology, Management & Budget (DTMB) provides fleet management services for the State's mostly centralized fleet. In addition to its fleet service activities, VTS is also charged by State statute with certain regulatory responsibilities including oversight of agency compliance with fleet-related rules and regulations, implementation of executive directives, and consolidated management reporting. All capital and operating costs borne by VTS in furnishing vehicles and fleet management services to other State agencies are financed through a cost charge-back system. The proceeds of fleet user charges are accounted for in the State's Motor Transport Fund.

State vehicles are operated by 17 agencies along with additional users such as the legislature, judiciary and higher education institutions. The State fleet includes many different types of vehicles including standard sedans, patrol cars, pickup trucks, buses, front-end loaders, heavy trucks, utility carts, and others.

#### **Current Fleet Service Delivery Methods**

The Contractor provides open-ended lease financing for vehicles acquired by the State, vehicle specification services, vehicle price negotiation, vehicle remarketing services, access to a network of commercial maintenance, repair, and upfitting service providers, maintenance and repair authorization services, accident management and subrogation services, vendor payment services, and management analysis and reporting services.

The State will provide for the licensing of all vehicles. A list of the assigned license plates will be given to the Contractor by the State at their request, post award.

The State may purchase products or services from other State contracts whenever it is in the best interest of the State to do so. For example, the State procures short-term rental vehicles under a separate contract.

The State has established replacement guidelines for light-duty vehicles (sedans, pickup trucks, SUVs, and vans) of 100,000 miles and/or ten years. Mileage is the primary factor that drives vehicle replacement decision making.

The State remarketed 856 vehicles in FY 2011 resulting in net sales returns of \$2.9 million. Approximately 90 percent of those vehicles were remarketed by the State of Michigan Surplus Services program, mostly via auctions. The State will continue to remarket vehicles in-house to the extent revenue is maximized in doing so.

The State operates one vehicle maintenance and upfitting facility in Lansing and five motor pools. The State currently performs approximately 10 percent of total fleet maintenance and repair services at this facility.

The State of Michigan vehicles are self-insured. The State's insurance coverage for a vehicle begins effective when a State employee takes delivery of a vehicle or when the vehicle is delivered to a State facility.



## **1.020 Scope of Work and Deliverables**

### **1.021 In Scope**

This Contract is for the components of a comprehensive fleet management system, including but not limited to:

- Vehicle Selection, Acquisition and Replacement
- Vehicle Financing
- Vehicle Remarketing
- Vehicle Maintenance and Repair
- Vehicle Accident Repair and Claims Management
- Commercial Fuel Card
- Recordkeeping, Data Management and Management Reporting

### **1.022 Work and Deliverable**

*Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in this section.*

#### **A. Vehicle Selection, Acquisition and Replacement**

1. The Contractor must process orders for new vehicles. New vehicle orders will be placed with the appropriate automobile manufacturers. Beginning with the next ordering cycle, Ford Motor Company may require that new vehicle orders be placed through their dealer network and not factory direct. Vehicles must be titled to the Contractor. The Contractor may select the ordering dealers; however all new vehicle deliveries must be credited to Michigan dealers. The Contractor must pass through any federal vehicle credits for alternative energy back to the State.
2. The Contractor must have the ability to purchase and/or lease used vehicles. Used vehicles are required to meet the State's seasonal requirements. The majority of seasonal requests are for sedans and ½ ton pickup trucks.
3. The Contractor must have the ability to obtain new vehicles as needed after the manufacturer build-out period has ended.
4. The Contractor must provide an annual selection process, focusing on matching available vehicle models to specific vehicle functional/application needs provided by the State. The Contractor must also provide written recommendations to the State on which models best meet each functional requirement within 30 days from the date that the State provides the functional requirements.
5. The Contractor must be able to occasionally (not to exceed 25 non-leased vehicles per fiscal year) purchase vehicles on behalf of the State of Michigan. This situation generally occurs with large, specialty vehicles.
6. The Contractor must prepare lifecycle cost analyses of all vehicle models considered for inclusion in the State's annual selector list. The Contractor must also submit their analysis results and recommendations to the State in Microsoft Excel within 15 business days from the date that pricing and government assistance is available from the State. The Excel worksheets must identify all data elements and reveal all formulas used in developing lifecycle reports and must be presented in a manner which allows further modeling by the State.
7. The Contractor must provide vehicle safety statistics such as crash test results and accident repair cost ratings in order to compare the safety of various makes and models of vehicles. The Contractor must submit statistics to the State at the same time that lifecycle cost analysis results are provided.
8. The Contractor must provide vehicle up-fitting services as defined by the State. Detailed specifications are established each model year. The State must approve, in writing, the selected vendor or vendor(s).



The Contractor begins the process of ensuring timely and proper installation of upfit equipment by selecting the right vendors in the right locations. By using ship-through upfitters whenever possible, the order-to-delivery timing is further shortened. The Contractor's Network Management Team requires upfitters to follow industry standards in safety and quality as set forth by the NTEA and truck manufacturers themselves. The select upfitter network provides clients with preferred pricing and scheduling, lower cycle times and upfitting status reports to help manage vehicles through the entire manufacturing process.

8. The Contractor must furnish a systematic, online vehicle order process that accommodates orders for all vehicle types and displays vehicle upfitting specifications in addition to standard and optional OEM vehicle equipment. The system must show the vehicle's status in each stage of the order process. The Contractor must provide order confirmation from manufacturer to the State within 10 business days. The Contractor must provide pre-notification of delivery five business days prior to delivery and notification of confirmation of delivery.
9. The Contractor must process the State's 2014 model year and subsequent year vehicle orders. The Contractor must provide a computerized order process, recommendations on specifications provided by the State and a delivery plan consistent with the State's needs.

## **B. Vehicle Financing**

1. The Contractor shall provide vehicle financing for the State's leased fleet. The following interest rate assumptions must be used:
  - Interest rates for new vehicles must be fixed for the life of each individual vehicle lease and indexed to the 2-year U.S. Treasury Bill rates in effect on the delivery date of the vehicle.
  - Interest rates for used vehicles must be fixed for the life of each individual vehicle lease and indexed to the 2-year U.S. Treasury Bill rates in effect on delivery date of the vehicle.

### **Lease Calculation**

The lease interest rate for each vehicle is established in the first month of the lease and fixed for the life of the lease. Interest rates for leases beginning each month are established on the 15<sup>th</sup> of the preceding month and communicated promptly (e.g., the rate for leases beginning in November is set on October 15).

The monthly lease payment is comprised of interest, reserve and management fee:

- Interest is calculated by multiplying the annual interest rate divided by 12 times the current book value or the average annual book value. The State has the option of choosing either option for each fiscal year of the Contract. If the State terminates a lease with interest based on average annual book value prior to the full lease amortization, the State will reimburse the Contractor for the difference between interest billed and what would have been billed if interest had been calculated on actual monthly book value. The book value is the vehicle's original stipulated cost less accumulated monthly reserve payments.
- Reserve payments are calculated based on the amortization schedule that the State chooses for each vehicle.

The Contractor is responsible for the physical custody of a new vehicle from the time it is delivered by the manufacturer to the upfitter or delivering dealership, until it is ultimately picked up by the State driver or delivered to the State. Monthly payment obligations begin on the first day of the calendar month following the month of delivery. From the date of delivery until the time monthly payment charges begin, a prorated charge applies in an amount equal to the first monthly payment charge pro-rated on a daily basis.

### **Liquidity and Assurance of Supply**

The Contractor uses diverse sources of funding and has a wide investor base that has been developed over many decades. The Contractor's philosophy is to anticipate market disruptions and always have multiple sources of finance and available liquidity. The Contractor will regularly utilize both public and private markets with the goal of not being dependent on any one market at a point in time. These methods of borrowing leverage public debt ratings (Standard & Poor's: A/A-1; Fitch Ratings: A-1/F-1), as well as the NAIC-1 rating, which is the standard for institutional investors such as large insurance companies.



Methods of funding include direct private placement notes with qualified institutional investors, conduit securitization, term asset backed securities, syndicated private loans, shelf facilities, committed bank lines, and commercial paper. The Contractor applies a rigorous approach to researching, implementing and evaluating funding tools. The Contractor has also been successful in using sophisticated technology to enhance our ability to measure risk, borrow funds, and monitor collateral pools and cash flows.

2. The Contractor shall possess the ability to offer the purchase of various lease terms which must include 36-, 42-, 48-, 50-, 60-, 72-, and 84-month terms. The lease must be classified as an operating lease as defined by the Financial Accounting Standards Board in Financial Accounting Standards #13.

The Contractor will work closely with the State to establish appropriate reserve rates by vehicle application. The leases have been carefully structured to qualify as an operating lease according to FASB guidelines.

3. The Contractor, upon request of the State will sell motor vehicle(s), via a method determined by the Contractor. Net proceeds is the net amount received from the sale of motor vehicle(s), minus any expenses and charges incurred during the sale process. Total recovery is net proceeds plus the reserve (as defined in Attachment A) at time of sale of the motor vehicle(s). If total recovery is in excess of the *Stipulated Cost* of the motor vehicle(s), the excess amount shall be credited to the State by the Contractor on the next billing cycle after the sale date. If the *total recovery* is less than the *Stipulated Cost* of the motor vehicle, the difference will be billed to the State on the next billing cycle. The Contractor shall guarantee to State that the *net proceeds* shall at least equal the following percentages of the fair market value of the vehicle as of the beginning of the 12-month period during which the date of termination occurs:

<b><i>Period</i></b>	<b><i>Percentage</i></b>
Initial 12-month period of lease	20%
Each subsequent 12-month period	30%

The State may, at its option, arrange for the sale of vehicle(s) independent of the Contractor. The above computations and processes regarding total recovery, net proceeds and Stipulated Cost still apply. Vehicle(s) may not be purchased by the State.

**C. Vehicle Remarketing**

1. The Contractor must provide for the remarketing of vehicles to maximize residual values, including the ability to reach markets for specialty vehicles. The State will define and authorize reconditioning of vehicles prior to remarketing.

The Contractor offers multiple channels for remarketing used vehicles. The Contractor's remarketing program for the State would continue to use State Surplus auctions as a channel for State vehicles. The Contractor would assist the State in flooring vehicles properly prior to the sale and evaluating sale results to ensure depth of demand, no price collusion between purchasing dealers, and sale prices commensurate with other remarketing channels. The Contractor will, upon request, provide the State with analytic support to evaluate for each used vehicle the economic benefit or cost of selling through the State's auction versus other channels given transportation costs, reconditioning costs, holding costs, and expected pricing.

2. The Contractor must accommodate the State's desire to remarket State vehicles through other channels of its choosing, such as State Surplus auctions.
3. The Contractor must offer multiple alternatives for vehicle remarketing including online, public and dealer auctions and wholesalers.
4. The Contractor must provide a process for refunding proceeds from remarketed vehicles to the State.

For vehicles sold by the Contractor, settlement occurs as part of the monthly invoicing process, with the credit or debit appearing on the next available billing after the sale takes place.



For vehicles sold at State Surplus auctions, the State sends the proceeds to the Contractor via wire transfer along with the sale paperwork. The Contractor then posts the sale amounts in their system and the vehicles are marked as sold and the net proceeds less vehicle book value are credited to the State on the next billing cycle.

5. The Contractor must dispose of State vehicles at the State's direction that are to be salvaged via outlets that provide the maximum resale value for the State.

The process begins when the Contractor receives notification of a wrecked unit either from the State or through the collision management program. The Contractor then assigns the vehicle to the closest salvage location to secure the unit and to keep transportation costs low. The Contractor applies for a salvage title based on the State's requirements to ensure that it is following all state and federal salvage laws.

Once a vehicle is sold, the funds are sent to the Contractor via ACH along with all documentation on sale of the vehicle. Through the disposal invoice process, the State is either credited or debited based on the difference between book value and the selling price of the vehicle.

All documentation is retained by the Contractor and will be available for auditing purposes per Section 2.112.

6. The Contractor shall ensure good and clear title to all vehicles purchased by the State at the time the State exercised the purchase option and good and clear title to any vehicle sold by the State pursuant to the Contract.

#### **D. Vehicle Maintenance and Repair**

1. The Contractor must provide a network of vehicle maintenance and repair vendors located throughout Michigan to service all VTS managed vehicles. The Contractor must have the ability to make payments to any vehicle maintenance facility. The Contractor must provide access to a database of current network vendors which includes vendor name and address. The database must be updated within 30 days after a vendor is added or deleted from the network.

Any warranties associated with vehicles provided under the Contract are supplied by the vehicle manufacturer and not by Contractor. Contractor will pass through to the State the benefits of any such warranties.

2. The Contractor must furnish a process for adding vendors to its maintenance and repair network. The State may require certain vendors to be added to Contractor's network. The VTS garage in Lansing must be added to Contractor's maintenance and repair network.

Upon receiving a request to add a potential vendor into the Contractor's network, the Contractor's network management group conducts a vendor coverage analysis to determine if an existing network vendor is located within the same area. This analysis helps to ensure that the Contractor provides convenient network coverage for the States drivers while retaining leverage over network vendors when negotiating pricing and repair scheduling. When appropriate, the Contractor initiates contact with the vendor, and if the vendor meets the Contractor's quality criteria for performance and service, the Contractor will use its best efforts to add the vendor to the Contractor's network.

3. The Contractor must provide a process for authorizing the performance of vehicle maintenance and repair services that includes consultation of individual vehicle maintenance and repair histories to ensure that proposed services are needed and will be performed cost effectively. The State will specify spending thresholds for authorization of specific services. The State and the Contractor will mutually agree upon a maintenance management process including but not limited to repair thresholds, driver responsibilities and billing processes. The process must be documented and may be changed with mutual agreement of the Contractor and the State during the life of the Contract.

The Contractor can customize the State's profiles to address varying needs by agency or location.



4. The Contractor must provide a centralized maintenance and repair call center and authorization system that is accessible 24x7 via a toll-free telephone number.

### **E. Vehicle Accident Repair and Claims Management**

1. The Contractor must provide a network of vehicle body repair vendors located throughout Michigan to service all VTS managed vehicles. The Contractor must have the ability to make payments to any vehicle maintenance facility. The Contractor must provide access to a database of current network vendors which includes vendor name and address. The database must be updated within 30 days after a vendor is added or deleted from the network.

In practice, the Contractor seldom uses non-network vendors because with collision repairs, drivers generally contact the Contractor first allowing consolidation of volume with fewer shops and leveraging the purchasing volume. Repairing vehicles in the preferred network gives the State preferred pricing on labor and parts that is guaranteed not to exceed industry standards; reduced repair cycle times, which gets the States vehicles back on the road faster and reduces temporary rentals; and a warranty for the fleet life of the vehicle, with all repairs backed by a credit-worthy repair shop.

2. The Contractor must furnish a process for adding vendors to the body repair vendor listing. The State may require certain vendors to be added to Contractor's network. The Contractor will exercise the same process to add vendors as stated in Section D Item 2.
3. The Contractor must provide a process for authorizing the performance of collision repair services that ensures that such services are performed cost effectively. The State will specify spending thresholds for authorization for specific services.
4. The Contractor must develop and implement a plan in consultation with the State for managing collision repair activities so as to minimize service costs and maximize service quality.
5. The Contractor must provide a centralized maintenance and repair call center and authorization system that is accessible 24x7 via a toll-free telephone number.

The Contractor's toll-free collision number is available 24 hours a day, 7 days a week. The Contractor's associates are available for accident reporting weekdays between 8:00 a.m. and 8:00 p.m. Eastern Time and Saturdays between 8:00 a.m. and 6:00 p.m. After these hours, calls are routed to roadside assistance, so drivers always receive assistance from a live person — never a recorded message. Emergency assistance for drivers – including towing – is available 24/7.

6. The Contractor must provide accident reports to the State via electronic format within 24 hours of taking the report from the driver. Accident reports must include a copy of the police accident report, if available.

When the Contractor receives a driver call to report an accident, the first concern is to ensure that the driver is safe. A Collision Repair Specialist sets up an electronic accident file, takes the first notice of loss and advises the driver on how to proceed in accordance with the State's policy. The Contractor then e-mails the first notice of loss report to the State's designated contacts within 24 hours. All documents received by the Contractor related to the accident (e.g., police reports, estimates, statements) are scanned and available for viewing online at any time via FleetView.

7. The Contractor must ensure statewide availability of professional collision damage appraisal providers.
8. The Contractor must manage subrogation for the State so that the maximum amount of recoveries permitted under Michigan's no-fault insurance laws are realized, including property damage, rental car costs and diminished value of the State's vehicle.

Under Michigan's no-fault insurance laws, the Contractor will pursue the \$500 no-fault insurance limit from the at-fault party when the other party is insured or when the State vehicle is moving. When the State



vehicle is parked, or if the other party does not have insurance, the Contractor can pursue full damages and ancillary expenses from the at-fault party. Larger subrogation claims in Michigan are only pursued from uninsured drivers, and collection may require the Contractor to arrange payment workouts from at-fault individuals.

9. The State of Michigan is self-insured. The State's insurance coverage for a vehicle becomes effective when a state representative takes physical custody of a vehicle or when the vehicle is delivered to a state facility.

The Contractor maintains insurance coverage in amounts appropriate to the nature and scope of our business and as specified in the State's standard terms in Section 2.130. The Contractor agrees that the State's liability does not commence until the vehicle is delivered to a State facility or the vehicle is picked up by a representative of the state.

10. The Contractor must assist the State as necessary with safety training for drivers.

#### **F. Commercial Fuel Card**

1. The Contractor must provide a standard size plastic commercial fuel card including a magnetic strip on the reverse side to be assigned to each specific vehicle assigned to various State agencies and departments. The card format must be distinctive so that it readily identifies the cardholder as an employee of the State of Michigan except as noted in #2 below and includes the following information:
  - a. State of Michigan.
  - b. Phrase: For Official Use Only – Tax-Exempt – NO. A154961.
  - c. Vehicle ID and License Plate.
  - d. The vendor's toll-free help line telephone number printed on the reverse side of the card
2. The Contractor must provide fuel cards that meet the unique needs of undercover law enforcement operations. These cards are not identified as a State card and may require a separate account number with a fictitious company name.
3. The Contractor must provide up to 15,000 fuel cards and allow multiple accounts or sub-accounts.
4. The Contractor must provide a system to manage up to 60,000, six-digit personal identification (PIN) codes that can be associated with any fuel card. The State currently uses the last six digits of the employee identification number as the PIN and provides this data to the Contractor. The Contractor must also provide the ability to update PIN codes on a weekly basis.
5. The Contractor must provide replacement fuel cards within three business days when a card is lost or stolen.
6. The Contractor must ensure statewide availability of fuel locations which accept its fuel card.
7. The Contractor must implement transaction controls and/or limits for each fuel card. The minimum controls are listed below. The State may require other controls be imposed upon fuel card transactions.
  - a. Maximum dollar transaction
  - b. Number of transactions in a period (e.g. day, week, month)
  - c. Transaction dollar volume in a period (e.g. day, week, month)
  - d. Monthly credit limits
  - e. Prevent cash advances
  - f. Restrict certain product types to specific dollar limits
  - g. Restrict certain fuel providers or facilities.

Transaction limits are available as follows:

- Maximum dollar transaction - yes



- Number of transactions in a period (e.g. day, week, month) - yes
- Transaction dollar volume in a period (e.g. day, week, month) – technically, no; total purchases by cards can be tracked during the period, but the authorization for the final transaction in a period would be limited by the maximum dollar transaction limit, not by the difference between the period limit and the current total. Therefore, the card total for the period could exceed the monthly limit by a small amount.
- Monthly credit limits – this seems to be the same as above
- Prevent cash advances – yes
- Restrict certain product types to specific dollar limits – yes
- Restrict certain fuel providers or facilities – yes

The Contractor's authorization profiles allow the assigning of a particular group of cards to a certain set of authorization controls. This allows the State to establish different parameters for different types of vehicles, such as sedans, heavy trucks, light trucks, emergency vehicles, etc. These controls can be applied at the card or the account level.

The Contractor's co-brand card allows the State to control the amount and frequency of purchases on its fuel cards, at the card or account level. Defining limits helps the Contractor and the State detect and prevent unauthorized transactions, potentially saving money by monitoring unauthorized purchases.

8. The Contractor must prevent and minimize fraudulent use of the fuel card.

The Contractor has a number of velocity controls in place to alert them to activity that is indicative of fraud. In addition, there is an audit trail that can be followed to track driver/PIN activity to determine who made a particular purchase or group of purchases. This security is further enhanced by prohibiting the duplication of PIN numbers within a fleet. Fuel management support staff carefully screen drivers calling in before providing information or authorizing transactions.

The Contractor screens and edits virtually every transaction to identify activity that may indicate fraud or misuse, or an error on the part of the service station. For example, billings are edited to identify any duplicate transactions prior to sending the billing to the State. The Contractor also edits for transactions that are over six months old – even if these are valid, the State is not to be billed for them. Charges made after a vehicle has been terminated will also not be charged back to the State.

All disputed items are temporarily suspended (not billed to the State) until resolved, providing ample time for the resolution of any potential fraud situations.

9. The Contractor must respond to customer service assistance calls on a 24/7 basis.

The Contractor provides 24/7 customer assistance for our Fuel Management Program. During business hours (7:30 am to 5:00 pm Central Time), calls are answered directly. After-hours called are handled directly by the vendor, who reports the information back to the Contractor for follow-up as needed the next business day.

The Contractor's facilities are supported by redundant voice and data communications provided by different telecommunication carriers. The primary data center and operations facilities are serviced by multiple power feeds, uninterrupted power supplies and backup power generation capability. In the event of a localized campus outage in which one building is inoperable, the Contractor has the capability to move business operations to the other campus facility. This includes backup desktop computer and phone systems.

For more severe outages, the Contractor maintains a business resumption center in a dedicated office location, geographically distinct from the main campus. This facility houses 180 seats and desktops and is available 24 hours per day to support multiple shifts. Through Virtual Desktop and IP Telephony



technology, workstations are kept current and can be reconfigured to support any employee. These technologies also allow for full capability to be delivered to employees working from home or other remote locations, as may be required by a disaster scenario.

10. The Contractor must maintain a process for enrolling additional fuel locations.
11. The Contractor must prevent further and future use of any individual card (card lockout) immediately upon notification by the driver or the State.
12. The Contractor must provide for retail fuel purchases of alternative fuels (propane, compressed natural gas, E85, biodiesel) used by the State.

Certain accepting merchants within WEX's network supply ethanol, natural gas (CNG, LNG), propane (LPG), hydrogen, biodiesel, methanol, and other alternative fuels. Wright Express has created an Alternative Fuel Directory using transaction information as passed to it by accepting merchants in concert with external sources such as the Department of Energy. This directory contains over 6,000 Wright Express accepting sites carrying at least one of these fuel types, including 187 in the State of Michigan.

Wright Express reports Ethanol, CNG, LNG and Methanol as those product codes are provided by its merchants. Biodiesel codes were just added into NACS (National Association of Convenience Stores) standard codes. Biodiesel can be reported separately as these new codes are programmed into point-of-sale and network software by accepting merchants.

13. The Contractor must post Level III fuel transactions data to the online system within three days from the date of the fuel purchase.
14. The Contractor must establish a fuel card program with cards delivered to designated State locations within 30 days after the contract is awarded. The Contractor will also provide processes for detecting and correcting billing errors, resolving billing disputes, and notifying the State about these errors and/or disputes. The State requires that all errors be corrected prior to the next billing period.

The Contractor has systems and process in place to ensure accurate billing. Prior to the start of the billing cycle, the file is balanced to the general ledger depreciation file. After billing is complete, all components are balanced to the Accounts Receivable system. Billing would stop if an exception were noted. The nature of our business is that the billing process is often specialized for individual clients. The Contractor inspects invoices any time significant changes in format are implemented.

The Contractor carefully screens and edits transactions to identify activity that may indicate fraud or misuse, or an error on the part of the service station.

15. The Contractor must provide replacement of expired fuel cards within 60 calendar days of expiration. The Contractor must deliver the cards to a variety of statewide locations as defined by the State.

### **G. Record Keeping, Data Management and Management Reporting**

*Contractor is fully responsible to manage and administer its Contractor-hosted system. In that regard, the Contractor must supply software maintenance and support services that provide corrections and changes for any defects, errors, or malfunctions in the Contractor software and that also provide new versions, updates and/or enhancements to current versions of the Contractor-hosted software at no additional cost.*

1. The Contractor must provide a real-time, browser-based client interface for account specific access via the internet with the capability to record all input and output data associated with the functional requirements described earlier. The Contractor must secure access to the system with access points by various users defined by the State. The system must have defined management and ad hoc reporting capability.



It must allow for image files to be uploaded and become part of the vehicle record. It is desirable that a text field for notes is associated with each vehicle record.

The system must accommodate certain data elements, the attributes of which are defined by the State. In addition, the system must contain at a minimum the information noted below:

#### **Vehicle Selection, Acquisition and Replacement**

Uniquely Assigned Vehicle Number (current system number is 5 digits)  
License Plate Number  
Vehicle Identification Number (VIN)  
Vehicle color  
Vehicle Manufacturer, Year, Make, Model, Body, Engine, and Fuel Type  
Odometer Reading and Associated Date  
Driver Name and Address  
Department Agency Assignment  
Vehicle In-Service Date  
Vehicle Termination Date  
Vehicle Capitalized Cost  
Vehicle In-Months Service  
Current Vehicle Book Value  
Add-on Equipment  
Upfit vendors associated with vehicle

#### **Vehicle Remarketing**

Date available for Sale  
Gross vehicle sales results  
Net vehicle sales results  
Transportation Costs  
Vehicle clean-up for resale costs  
Vehicle number  
License Plate Number  
Vehicle Identification Number (VIN)  
Vehicle Manufacturer, Year, Make, Model, Body, Engine, and Fuel Type  
Odometer Reading and Associated Date

#### **Vehicle Maintenance and Repair**

Maintenance and repair work order status  
Maintenance and repair costs  
Vehicle number  
License Plate Number  
Vehicle Identification Number (VIN)  
Vehicle Manufacturer, Year, Make, Model, Body, Engine, and Fuel Type  
Odometer Reading and Associated Date  
Driver Name and address  
Department agency assignment

#### **Vehicle Accident Repair and Claims Management**

Accident date, time, location, weather  
Type accident (e.g. intersection) and causes (e.g. following too close) of accidents



Accident repair costs  
 Repair estimates  
 Other party name, address, telephone, vehicle data, and insurance company  
 Repair status and results  
 Subrogation status and results  
 Excessive Repair  
 Original accident repair invoices  
 Original appraisals  
 Vehicle number  
 License Plate Number  
 Vehicle Identification Number (VIN)  
 Vehicle Manufacturer, Year, Make, Model, Body, Engine, and Fuel Type  
 Odometer Reading and Associated Date  
 Driver Name and address  
 Department agency assignment

### **Commercial Fuel Card**

Vehicle ID  
 Transaction Date  
 License Plate  
 Transaction Time  
 License Plate State  
 Station Brand  
 VIN  
 Station Name  
 Department  
 Station Address  
 Location Code  
 Station City  
 Driver Last Name  
 Station State and Zip code  
 Driver First Name  
 Quantity purchased  
 Total sale  
 Internal or pay at the pump  
 Monthly spending limit  
 Type of product purchased  
 Approved SIC or merchant codes  
 Expiration Date  
 Card Status

2. The Contractor must provide reasonable security precautions including passwords, encryption and restricted access to information. The security model must address application, data, network and physical security as it relates to delivering safe and private information over the web.
3. The Contractor must ensure that the data system maintains driver email addresses and possesses the capability to email notifications to the driver.



4. The Contractor must provide a system that will accept uploads of transactional data in an exportable file structure from an internal fleet management information system for integration into Contractor's database. The file structure will be mutually agreed upon between the Contractor and the State.
5. The Contractor must conduct an annual review of State's goals and objectives and provide a report explaining the Contractor's contributions and how they align with those goals and objectives. The Contractor must assess and benchmark fleet performance and outcomes against similar fleets using published industry standards and addressing vehicle selection, acquisition and replacement; financing; remarketing; maintenance and repair; accident repair and claims management; and the commercial fuel card.
6. The Contractor must measure driver adherence to the vehicle manufacturer's established preventive maintenance schedules and provide a quarterly report to the OSS Director.
7. The Contractor must ensure that the State is kept up-to-date about any recalls related to their vehicles, the Contractor provides the manufacturers with the names and addresses of all drivers who have the type of vehicle involved in a recall campaign. The manufacturers then issue recall notices. On safety-related issues, the Contractor also sends an electronic notification to the State regarding the recall. Current open recalls are also available in FleetView and communicated in the newsletter, FleetWeek..
8. The Contractor must maintain a current business continuity plan, which must be turned into the CCI.
9. The Contractor must maintain at a minimum a daily backup of fleet management data which can be utilized to restore data.
10. The Contractor must ensure the fleet management system is available on a 24/7 basis, schedule required maintenance during non-business hours, if possible, and provide advance notification to the State of any scheduled system down time.
11. The Contractor must possess the capability to create custom reports as defined by the State at no cost to the State. Once created, the Contractor should make them available as a standard report if the State desires.
12. The Contractor must provide a system with full-featured defined and ad hoc query report capability on demand accessible via the Internet in a graphical user interface including:
  - a. Predefined, formatted reports of common management interest data with selection and sorting functionality
  - b. Custom report writing services upon request in addition to Contractor's predefined report list
  - c. Ad hoc query tools permitting the extraction of all data elements via a graphical user interface. Data to be viewable on line and downloadable on demand in Microsoft Excel, Microsoft Access, and delimited text formats.
13. The Contractor must perform system upgrades at no additional cost to the State.

## **H. Billing**

1. The Contractor must provide an effective billing date for each vehicle and describe how termination is determined.

Monthly lease billing begins the first day of the month following the delivery date. From the delivery date to the first day of monthly billing, the State will pay an amount equal to the first full-month lease payment, prorated on a daily basis. For vehicles acquired from dealer stock, delivery date is the date the State takes possession of the vehicle. For vehicles ordered from the manufacturer, delivery date is the date ten days following the effective date the invoice from the manufacturer is validated and paid. In either case, an exception will be made when the vehicle requires additional equipment installation outside the manufacturers' traffic system. In those instances, delivery date is the date the vehicle is shipped from the equipment installer. Also in those instances, the Contractor will add interest carrying cost to the Stipulated Cost of the vehicle calculated on any amounts advanced by the Contractor for the vehicle or equipment at



an interest rate equal to prime plus one percent from 10 days following the date of payment to the delivery date. From the time of delivery of the vehicle the State assumes all responsibility for the operating costs of the vehicle.

The termination date of the lease is the date of sale or, for vehicles sold by the State, the date the Contractor receives the sale proceeds. Monthly payment obligations end on the last day of the calendar month preceding termination. From then until the date of termination, a prorated charge applies, equal to the last monthly payment charge pro-rated on a daily basis.

2. The Contractor must provide an invoicing system that is flexible enough to provide:
  - a. Unit specific billing with summary level data based on the State's accounting and/or vehicle type structure.
  - b. Online update of key accounting, driver and mileage data via secured access to individual data fields.
  - c. Auditing of actual vendor costs incurred at the transaction level of detail.
  - d. The ability to add additional data elements if required by the state.

The Contractor must be able to provide an invoice which includes at a minimum each of the data elements associated with the lease, maintenance and miscellaneous billing columns found in Attachment D – Data Elements\_Billing\_Interface\_Files.

3. The Contractor shall invoice the State on a monthly basis. The Contractor shall also provide processes for detecting and correcting billing errors, resolving billing disputes, and notifying the State about these errors and/or disputes. The State requires that all errors be corrected prior to the next billing period.

### **1.030 Roles and Responsibilities**

#### **1.031 Contractor Staff, Roles, and Responsibilities**

The Contractor must provide names and titles of Key Personnel as well as the job descriptions and functions they will be fulfilling. The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of any personnel deemed unsatisfactory by the State. All changes of Key Personnel, whether for resignation or termination must be reported to the Contract Administrator per Section 2.062d.

**Scott Pattullo – Senior Vice President - Sales, Marketing & Account Management:** Scott has been with Wheels since 1997 and has been integrally involved in supporting the State of Michigan since that time, through participation in a variety of account reviews, strategic recommendations and assistance with high-level planning. Scott sits on the Wheels Executive Committee and is a member of Wheels' Board of Directors. Born and raised in Michigan, Scott has a B.S. in Electrical Engineering from Michigan Tech University and an MBA from Dartmouth College.

**Kathy Pennington – Account Manager:** Kathy has been with Wheels for nine years and has a broad range of project management and account management experience. Kathy has been working with the State for two years, providing consultative support to help the State plan for achieving your fleet goals. She regularly presents performance metrics and recommendations for improving the efficiency and cost effectiveness of the State's fleet. Kathy has helped the State automate processes, and she has developed process flow charts to improve efficiencies.

**Laura Jozwiak – Senior Director - Client Relations:** Laura has been with Wheels for ten years and has 20 years of fleet industry experience. She has worked with the State of Michigan for two years. Laura participates in the State's annual Executive Reviews and works to ensure the State's ongoing satisfaction with the results Wheels delivers. She has led and participated in numerous continuous improvement projects for many of Wheels' large, complex accounts that have resulted in costs savings and productivity gains and leverages this experience for the State. Laura has earned her CAFM (Certified Automotive Fleet Manager) through NAFA (National Association of Fleet Administrators), which gives her a unique insight into the daily issues of fleet through the eyes of the fleet manager.

**1.040 Project Plan****1.041 Project Plan Management – Deleted/Not Applicable****1.042 Reports – Deleted/Not Applicable****1.050 Acceptance****1.051 Criteria – Deleted/Not Applicable****1.052 Final Acceptance – Deleted/Not Applicable****1.060 Proposal Pricing****1.061 Proposal Pricing**

See Attachment A.

Contractor will extend bundled leasing and service terms and prices to MiDEAL or Cooperative Purchasing Program members subject to reasonable credit and liability review.

Pricing for maintenance, fuel, accident, remarketing, and fees associated with said services will be in accordance with execution date of this contract for all existing vehicles in the fleet and for vehicles acquired after execution of this Contract. Lease Pricing under prior contract #071B5200359 remains in effect for the life of the existing vehicles in the fleet as of the date of execution of the new contract. Lease pricing includes fees and discounts for vehicle acquisition, interest rates, monthly management fee, and the monthly fee for vehicles that are fully depreciated. Lease Pricing specified in this Contract will take effect for all vehicles acquired after execution of this Contract.

**1.062 Price Term**

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

**1.063 Tax Excluded from Price**

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

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

**1.064 Holdback – Deleted, Not Applicable****1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this RFP**

The Motor Vehicle Code Act 300 of 1949 governs motor vehicles in Michigan including expectations of lessors and lessees.



## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is for a period of five years, five months beginning May 8, 2013 through September 30, 2018. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

Additionally at the end of the Contract period, the State may choose to continue to pay the remaining monthly lease and interest charges for all vehicles under lease on the effective date of Contract termination.

#### **2.002 Options to Renew**

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 3 additional one-year periods. The State reserves the right to request to exercise one or more options at a time.

#### **2.003 Legal Effect**

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

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

#### **2.004 Attachments & Exhibits**

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

#### **2.005 Ordering**

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

#### **2.006 Order of Precedence**

(a) The Contract, 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**.



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

### **2.007 Headings**

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

### **2.008 Form, Function & Utility**

If the Contract is for use of more than one (1) 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 (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

### **2.010 Consents and Approvals**

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

### **2.011 No Waiver of Default**

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

### **2.012 Survival**

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

## **2.020 Contract Administration**

### **2.021 Issuing Office**

The Contract is issued by the Department of Technology Management and Budget, DTMB-Procurement and the Office of Support Services (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. DTMB-Procurement **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DTMB-Procurement for the Contract is:

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

### **2.022 Contract Compliance Inspector**

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Director of DTMB-Procurement, in consultation with the Office of Support Services will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis



during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement.** The CCI for the Contract is:

Roy Cischke  
Department of Technology, Management & Budget  
VTS Bldg., 2<sup>nd</sup> Floor  
6951 Crowner Drive  
P.O. Box 30026  
Lansing, MI 48909  
Email: [cischker@michigan.gov](mailto:cischker@michigan.gov)  
Phone: 517-322-5148  
Fax: 517-322-1423

### **2.023 Project Manager**

The following individual will oversee the project:

Joyce Van Coevering, Director, Office of Support Services  
Department of Technology, Management & Budget  
VTS Bldg., 2<sup>nd</sup> Floor  
6951 Crowner Drive  
P.O. Box 30026  
Lansing, MI 48909  
Email: [vancoeveringj1@michigan.gov](mailto:vancoeveringj1@michigan.gov)  
Phone: 517-322-5005  
Fax: 517-322-1423

### **2.024 Change Requests**

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

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

Change Requests:

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

**2.025 Notices**

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, 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.

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

**2.026 Binding Commitments**

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

**2.027 Relationship of the Parties**

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

**2.028 Covenant of Good Faith**

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

**2.029 Assignments**

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

(b) The State hereby consents to the assignment by Contractor of all its rights and interest in and to the vehicles and the payments attributable thereto. No such assignee shall be obligated to perform any duty, covenant or condition required to be observed or performed by the Contractor under the Contract. The Contractor shall keep a record of all such assignments and provide written notice to the State. All payments by the State under the Contract shall be made to a single entity. The State's rights to terminate the Contract or the payments on any vehicle pursuant to the terms of the Contract shall remain in full force and effect and shall not be impaired by any assignment. None of the State's rights, title, interest in, to and under this Contract or any leased vehicle may be assigned, subleased, or encumbered by the Contractor for any reason.

(c) Other than as referenced in 2.029(b), 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 must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

**2.032 Contract Distribution**

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

**2.034 Website Incorporation**

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

**2.035 Future Bidding Preclusion**

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

**2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

**2.037 Disaster Recovery**

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

**2.040 Financial Provisions****2.041 Fixed Prices for Services/Deliverables**

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

**2.042 Adjustments for Reductions in Scope of Services/Deliverables**

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

**2.043 Services/Deliverables Covered**

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



#### **2.044 Invoicing and Payment – In General**

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

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

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 CCI, 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 any Services that are to be paid for on a monthly basis, the cost of such Services must 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 the Contract.

#### **2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

#### **2.048 Electronic Payment Requirement**

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

#### **2.050 Taxes**



## **2.051 Employment Taxes**

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

## **2.052 Sales and Use Taxes**

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan 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 (2) or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

## **2.060 Contract Management**

### **2.061 Contractor Personnel Qualifications**

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

### **2.062 Contractor Key Personnel**

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

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

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

**2.064 Contractor Personnel Location**

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

**2.065 Contractor Identification**

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

**2.066 Cooperation with Third Parties**

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

**2.067 Contractor Return of State Equipment/Resources**

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

**2.068 Contract Management Responsibilities**

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

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

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



### **2.072 State Consent to Delegation**

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

### **2.073 Subcontractor Bound to Contract**

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

### **2.074 Flow Down**

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

### **2.075 Competitive Selection**

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

## **2.080 State Responsibilities**

### **2.081 Equipment**

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

### **2.082 Facilities**

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



## **2.090 Security**

### **2.091 Background Checks**

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

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See [http://www.michigan.gov/documents/dmb/1460.00\\_184733\\_7.pdf](http://www.michigan.gov/documents/dmb/1460.00_184733_7.pdf). Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

### **2.092 Security Breach Notification**

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

### **2.093 PCI Data Security Standard –Deleted/Not Applicable**

## **2.100 Confidentiality**

### **2.101 Confidentiality**

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

### **2.102 Protection and Destruction of Confidential Information**

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract,



(B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

### **2.103 Exclusions**

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

### **2.104 No Implied Rights**

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

### **2.105 Respective Obligations**

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

## **2.110 Records and Inspections**

### **2.111 Inspection of Work Performed**

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

### **2.112 Examination of Records**

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.



### **2.113 Retention of Records**

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

### **2.114 Audit Resolution**

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

### **2.115 Errors**

- (a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

### **2.120 Warranties**

#### **2.121 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.



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

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

### **2.122 Warranty of Merchantability**

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

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

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

### **2.124 Warranty of Title – Deleted/Not Applicable**

### **2.125 Equipment Warranty – Deleted, Not Applicable**

### **2.126 Equipment to be New – Deleted, Not Applicable**

### **2.127 Prohibited Products – Deleted, Not Applicable**

### **2.128 Consequences For Breach**

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

## **2.130 Insurance**

### **2.131 Liability Insurance**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

- 4. Employers liability insurance with the following minimum limits:  
 \$100,000 each accident  
 \$100,000 each employee by disease  
 \$500,000 aggregate disease

- 5. Employee Fidelity, including Computer Crimes, insurance 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 \$1,000,000.00 with a maximum deductible of \$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: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. 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 the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

### **2.133 Certificates of Insurance and Other Requirements**

Contractor must furnish to DTMB-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 OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST 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, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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 (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, 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 the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

**2.142 Code Indemnification**

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

**2.143 Employee Indemnification**

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

**2.144 Patent/Copyright Infringement Indemnification**

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

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

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

**2.145 Continuation of Indemnification Obligations**

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



## **2.146 Indemnification Procedures**

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

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

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

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

## **2.150 Termination/Cancellation**

### **2.151 Notice and Right to Cure**

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

### **2.152 Termination for Cause**

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



(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

### **2.153 Termination for Convenience**

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

### **2.154 Termination for Non-Appropriation**

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

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

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

**2.155 Termination for Criminal Conviction**

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

**2.156 Termination for Approvals Rescinded**

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

**2.157 Rights and Obligations upon Termination**

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

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

**2.158 Reservation of Rights**

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

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

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



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

## **2.170 Transition Responsibilities**

### **2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed **90** days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

### **2.172 Contractor Personnel Transition**

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must identify and maintain a Single Point of Contact for the State after termination of the Contract until all product and service obligations have been met.

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 the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

### **2.173 Contractor Information Transition**

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

### **2.174 Contractor Software Transition**

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

### **2.175 Transition Payments**

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



### **2.176 State Transition Responsibilities**

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

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

### **2.180 Stop Work**

#### **2.181 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

#### **2.182 Cancellation or Expiration of Stop Work Order**

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

#### **2.183 Allowance of Contractor Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

### **2.190 Dispute Resolution**

#### **2.191 In General**

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

#### **2.192 Informal Dispute Resolution**

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

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue



which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.

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

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

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

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

### **2.193 Injunctive Relief**

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

### **2.194 Continued Performance**

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

## **2.200 Federal and State Contract Requirements**

### **2.201 Nondiscrimination**

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

### **2.202 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.



### **2.203 Workplace Safety and Discriminatory Harassment**

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

### **2.204 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. Contractor must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Licensing and Regulatory Affairs, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

### **2.210 Governing Law**

#### **2.211 Governing Law**

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

#### **2.212 Compliance with Laws**

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

#### **2.213 Jurisdiction**

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

### **2.220 Limitation of Liability**

#### **2.221 Limitation of Liability**

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



## **2.230 Disclosure Responsibilities**

### **2.231 Disclosure of Litigation**

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

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

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

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

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
- (2) Contractor must 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 must 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 the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

### **2.233 Bankruptcy**

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

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;



- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

## **2.240 Performance**

### **2.241 Time of Performance**

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

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

### **2.242 Service Level Agreements (SLAs) – Deleted, Not Applicable**

### **2.243 Liquidated Damages- Deleted, Not Applicable**

### **2.244 Excusable Failure**

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

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

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



Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

### **3.250 Approval of Deliverables**

#### **2.251 Delivery Responsibilities**

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

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.

(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

#### **2.252 Delivery of Deliverables**

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

#### **2.253 Testing**

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.



### **2.254 Approval of Deliverables, In General**

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

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

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

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

### **2.255 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows



all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

### **2.256 Process for Approval of Services**

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

### **2.257 Process for Approval of Physical Deliverables**

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

### **2.258 Final Acceptance**

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

## **2.260 Ownership**

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

### **2.262 Vesting of Rights**

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

### **2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any



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

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

#### **2.264 Ownership of Materials**

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

#### **2.270 State Standards**

##### **2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

##### **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](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**

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

#### **2.280 Extended Purchasing**

##### **2.281 MIDEAL**

###### **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](http://www.michigan.gov/mideal).
2. The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Procurement.
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 volume 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 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, Not Applicable**

**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.
- (d) The State reserves the right to evaluate and establish an alternative Administrative Fee for individual participating States, appropriate to their usage.

**2.290 Environmental Provision**

**2.291 Environmental Provision**

Hazardous Materials:

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

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



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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

#### Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

#### Environmental Performance:

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

### **2.300 Other Provisions**

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

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

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



**Attachment A**  
**Total Cost of Ownership**

Associated with Excel Workbook Total Cost in Attachment A

- 1. Note that each spreadsheet assumes a different lease term and a different vehicle.
- 2. If Contractor's calculations to reach the stipulated cost include discounts or fees, please define and explain each such line item in the box below.

Contractor Explanation for Discounts and Fees:

Discount 1: SOM manufacturer incentive for specific model

Discount 2: Credit of dealer holdback for specific vehicle (generally 3% of MSRP)

Discount 3: Credit of dealer floorplan for specific vehicle (includes 12, 15, 30 and 45 day programs, differs by manufacturer and changes year to year)

Fee 1: Acquisition fee = \$200 for all vehicles. Added to stipulated cost.

Fee 2: Per diem prorated rental for days (17 in this case) following delivery date prior to lease beginning first of next month (detailed in 1.022 B-1 Lease Calculation and 1.022 H-1 Billing). One-time charge billed with first month lease payment and not added to stipulated cost.

Fee 3: Acquisition fee of 1% of Base Purchase Price for vehicles acquired from dealers, not through dealer sub code ordering. Added to stipulated cost and capped at \$250.

The 10 days new vehicle carrying cost is included in Contractor's pricing. In situations where delivery is more than 10 days following invoice payment, carrying cost will be calculated at prime plus 1% and added to stipulated cost. (See 1.022 H1)

Pass-through of manufacturer prep and delivery credits for vehicles delivered to VTS and dealer courtesy delivery charges for vehicles delivered to dealers. No fees from Contractor.

For acquisition of non-leased vehicles: fee of 2% of base purchase price.

- 3. In the Total Cost of Ownership modeling, explain how Contractor defines and/or calculates each shaded component that Contractor filled in.

Contractor Explanation of Annual Interest:

Interest rate for each vehicle fixed at beginning of lease based on index of 2Yr U.S. Treasury Rate

Addition to index rate based on amortization of lease:

- 36 months: 115 bp
- 42 months: 115 bp
- 50 months: 115 bp
- 60 months: 115 bp
- 72 months: 150 bp
- 84 months: 170bp

When spread between 2Yr Treasury rate index and 3Yr AA corporate bond index exceeds 100bp, additional interest adjustment equal to the amount by which the spread exceeds 100bp.

Current interest rates as of Oct 15, 2012:  
2Yr Treasury Rate: .3%



2Yr T vs 3Yr AA bond adjustment: .025% (1.325 - .3 - 100)  
 36 months: 1.475% (.3 + .025 + 1.15)  
 42 months: 1.475%  
 50 months: 1.475%  
 60 months: 1.475%  
 72 months: 1.825%  
 84 months: 2.025%

Interest calculated each month based on current month book value.

Pricing quoted is inclusive of a 1.5% discount if paid by the 10<sup>th</sup> of the month.

**Contractor Explanation of Annual Principal:**

Monthly reserve payment = reserve rate based on lease amortization x stipulated cost

Reserve payments end when vehicle fully depreciated

**Contractor Explanation of Fuel Fees:**

70bp rebate for all fuel purchases provided average price per gallon exceeds \$2

**Contractor Explanation of Maintenance Fees:**

\$1 per month per vehicle maintenance fee

No fees for tows/roadside or for warranty claims

Assuming all maintenance purchases are in-network (10% charge for out-of-network purchases)

**Contractor Explanation of Accident Fees:**

\$125 fee per accident.

2% rebate on all accident repair network billing.

20% rebate on all glass purchases; SOM spends roughly \$400,000 per year on glass over 7500 vehicles or \$4.50 glass repair purchases per vehicle per month; \$4.50 x 20% = (\$.90) per month

**Contractor Explanation of Resale Fees:**

\$50 sale fee when sold by State (currently 90% of vehicles).

\$100 sale fee when sold by Contractor.

Note: Used a plug figure of \$15,000 resale value for each example vehicle rather than estimate a resale value. Since this is not a closed end bid, Contractor assumes SOM will decide what resale value to assume for each vehicle and not let bidders game the analysis.

Termination billed according to 1.022 H-1 Billing. Vehicles in this example assumed to be sold following completion of their lease terms. In rare situations where it applies, carrying cost on used vehicles will be billed at prime plus 1%.

**Contractor Explanation of Other Fees:**



Monthly management fee = .03% x stipulated cost

\$25 monthly fee for fully depreciated vehicles

\$15 set up fee for non-Contractor vehicles (



The following are for illustrative purposes only.



**Appendix A1  
State of Michigan  
DTMB - Vehicle & Travel Services**

2012 Chevrolet Express 3500 2WD Passenger 155" 1LS MODEL # CG33706

Base Purchase Price	<b>\$34,214.82</b>
Lease Term	36
In Service Date	7/13/2012
Annual Mileage	33,333
MPG Combined avg.	12
Fuel Cost (Gal.)	\$ 3.35

- |  |   |
|--|---|
| (L96) - Engine, Vortec 6.0L V8 SFI FlexFuel      | (AU3) - Door locks, power                             |
| (FE9) - Emissions, Federal requirements          | (-ST51) - Tires, front LT245/75R16E all-season, black |
| (-ST66) Transmission, 6-speed automatic, heavy-d | (-ST50) - Tires, rear LT245/75R16E all-season, black  |
| (UA1) - Battery, heavy-duty 770 cold-cranking am | (ZX5) - Seating, 12-passenger, (2-3-3-4 seating)      |
| (G80) - Differential, heavy-duty locking rear    | (1LS) - LS Preferred Equipment Group                  |
| (GU6) - Rear axle, 3.42 ratio                    | (5T5) - Seats, front bucket with Custom Cloth         |
| (-ST65) Tow/haul mode selector, instrument panel | (AS5-F) - Seats, front Custom Cloth buckets           |
| (Z82) - Trailering equipment, heavy-duty         | (93_) - Interior Color: Medium Pewter                 |
| (UY7) - Trailer wiring, 7-pin sealed connector   | (_W) - Interior Fabric: Custom Vinyl                  |
| (UM7) - Audio system, AM/FM stereo               | (_W) - Interior Type: Custom Vinyl                    |

Discount (1)	\$8,700.00	Fee (1)	\$ 200.00	Interest Rate	1.48%
Discount (2)	\$1,078.74	Fee (2)	\$ 397.79		
Discount (3)	\$ 564.47	Fee (3)	\$ -		
Discount (4)	\$ -	Fee (4)	\$ -		
Discount (5)	\$ -	Fee (5)	\$ -		
Discount (6)	\$ -	Fee (6)	\$ -		
Discount (7)	\$ -	Fee (7)	\$ -		
Discount (8)	\$ -	Fee (8)	\$ -		
Discount (9)	\$ -	Fee (9)	\$ -		
Stipulated Cost	<b>\$ 24,469</b>				



Lease Year	Annual Interest	Annual Principal	Fuel Cost	Fuel Gallons	Fuel Fees	Maintenance Cost	Repair Order Count	Maintenance Fees	Accident Cost	Accident Count	Accident Fees	Resale	Resale Fee	Other Fees	Cost Of Ownership
Year 1	\$300.77	\$8,030.29	\$9,305	2,778	\$(65.14)	\$78.00	3	\$12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 86.66	\$17,748
Year 2	\$182.32	\$8,030.29	\$9,305	2,778	\$(65.14)	\$131.00	5	\$12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 86.66	\$17,683
Year 3	\$ 63.87	\$8,011.03	\$9,305	2,778	\$(65.14)	\$171.00	4	\$12.00	\$1,789	1	\$56.82	\$ -	\$ -	\$86.66	\$19,431
Year 4	\$ -	\$ -	\$ -	-	\$ -	\$ -	0	\$ -	\$ -	0	\$ -	\$15,000.00	\$ 50.00	\$ -	\$(14,950)

**\$39,911** Sub Total

Total Fees & Interest	<b>\$ 546.96</b>				<b>\$(195.41)</b>			<b>\$36.00</b>			<b>\$ 56.82</b>		<b>\$50.00</b>	<b>\$259.97</b>	<b>\$754.34</b>	Total Fees & Interest
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**\$39,157** Grand Total



**Appendix A1  
State of Michigan  
DTMB - Vehicle & Travel Services**

2012 Dodge  
Charger 4DR  
Sdn Police  
RWD MODEL #  
LDDE48

(EZH) - 5.7L Hemi VVT MDS V8 engine (NFFV) - non-flex fuel vehicle  
(LNA) - Matching passenger-side spot lamp  
(LNF) - Black driver-side spot lamp

(NSA-F) - 50 State emissions (-ST92) - Autostick automatic transmission (TWW) - P225/60R18 performance BSW tires  
(CKJ) - Black vinyl floor covering  
(P79) - Primary exterior color: Michigan State Police Blue  
(X9\_) - Interior Color: Black Interior

(LNx) - LED spot lamps (29A) - 29A police customer preferred order sale  
(LBG) - Front map lights  
(\_X5) Seat Fabric: HD Cloth Front Bucket seats w/vinyl rear  
(\_X5) Seat Type: HD Cloth Front Bucket seats w/vinyl rear  
(CVIP) Chrysler incentive program

Base Purchase Price **\$ 32,593**

Lease Term 42

In Service Date 7/13/2012

Annual Mileage 28,571

MPG Combined avg. 19

Fuel Cost (Gal.) \$ 3.35

Discount (1)	\$8,080.00
Discount (2)	\$999.05
Discount (3)	\$142.59
Discount (4)	\$ -
Discount (5)	\$ -
Discount (6)	\$ -
Discount (7)	\$ -
Discount (8)	\$ -
Discount (9)	\$ -

Fee (1)	\$ 200.00
Fee (2)	\$ 338.32
Fee (3)	\$ -
Fee (4)	\$ -
Fee (5)	\$ -
Fee (6)	\$ -
Fee (7)	\$ -
Fee (8)	\$ -
Fee (9)	\$ -

Interest Rate **1.48 %**

Stipulated Cost **\$ 23,910**



Lease Year	Annual Interest	Annual Principal	Fuel Cost	Fuel Gallons	Fuel Fees	Maintenance Cost	Repair Order Count	Maintenance Fees	Accident Cost	Accident Count	Accident Fees	Resale	Resale Fee	Other Fees	Cost Of Ownership
Year 1	\$ 302.17	\$6,731.98	\$ 5,038	1,504	\$(35.26)	\$97.00	3	\$12.00	\$ -	0	\$-			\$84.86	\$12,230
Year 2	\$ 202.87	\$6,731.98	\$ 5,038	1,504	\$(35.26)	\$293.00	5	\$12.00	\$ -	0	\$-			\$84.86	\$12,327
Year 3	\$ 103.57	\$6,731.98	\$ 5,038	1,504	\$(35.26)	\$467.00	4	\$12.00	\$2,159	1	\$44.02			\$84.86	\$14,605
Year 4	\$ 14.56	\$3,375.42	\$ 2,589	773	\$(18.12)	\$273.59	2	\$6.00	\$	0	\$	\$15,000.00	\$50.00	\$49.50	\$(8,660)

**\$30,502** Sub Total

Total Fees & Interest **\$ 623.17** **#####** **\$42.00** **\$44.02** **\$50.00** **\$304.07** **\$939.35** Total Fees & Interest

**\$29,563** Grand Total



**Appendix A1  
State of Michigan  
DTMB - Vehicle & Travel Services**

2012 Dodge Grand Caravan 4dr WGN SE  
MODEL # RTKH53

(ERB) - 3.6L VVT 24-valve V6 flex fuel engine  
(XKN) - Flex fuel system  
(DG2) - 6-speed automatic transmission w/OD  
(-ST74) - Autostick automatic transmission  
(NAS) - 50 State emissions  
(TX4) - P225/65R16 BSW A/S tires  
(CYC) - 2nd row fold-in-floor bucket seats  
(AWH) - Pwr window group  
(JPR) - 8-way pwr driver seat  
(29E) - 29E SE customer preferred order selection  
(LMN) - Daytime running lamps  
(CVIP) Chrysler incentive program  
(SER) - Load leveling & height control  
(\_H7) Seat Fabric: Cloth Seat Trim  
(\_H7) Seat Type: Cloth Seat Trim

Base Purchase Price	\$24,053
Lease Term	50
In Service Date	7/13/2012
Annual Mileage	24,000
MPG Combined avg.	20
Fuel Cost (Gal.)	\$ 3.35

Discount (1)	\$3,855.00
Discount (2)	\$710.33
Discount (3)	\$105.23
Discount (4)	\$ -
Discount (5)	\$ -
Discount (6)	\$ -
Discount (7)	\$ -
Discount (8)	\$ -
Discount (9)	\$ -
Stipulated Cost	<b>\$19,821</b>

Fee (1)	\$ 200.00
Fee (2)	\$ 238.90
Fee (3)	\$ -
Fee (4)	\$ -
Fee (5)	\$ -
Fee (6)	\$ -
Fee (7)	\$ -
Fee (8)	\$ -
Fee (9)	\$ -

Interest Rate	1.48 %
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**Appendix A1  
State of Michigan  
DTMB - Vehicle & Travel Services**

2012 Chevy Impala 4dr Sdn LS Fleet MODEL # 1WF19

Base Purchase Price	<b>\$24,887.41</b>
Lease Term	60
In Service Date	7/13/2012
Annual Mileage	20,000
MPG Combined avg.	22
Fuel Cost (Gal.)	\$ 3.35

- |   |                                      |
|---|--------------------------------------|
| (LFX) - Engine, 3.6L SIDI DOHC V6 VVT               | (1FL) - LS Preferred Equipment Group |
| (FHS) - E85 FlexFuel capable                        | (AR9) - Seats, front bucket          |
| (MX0) - Transmission, 6-speed automatic, electronic | (_C) - Seat Fabric: Cloth Seat Trim  |
| (FE9) Emissions, Federal requirements               | (_C) - Seat Type: Cloth Seat Trim    |
| (U1C) - Audio system, AM/FM stereo with CD player   | (FVX) - National Fleet incentive     |
| (-ST42) - Tires, P225/60R16 all-season, blackwall   |                                      |

Discount (1)	\$ 6,000.00
Discount (2)	\$ 751.95
Discount (3)	\$ 520.26
Discount (4)	\$ -
Discount (5)	\$ -
Discount (6)	\$ -
Discount (7)	\$ -
Discount (8)	\$ -
Discount (9)	\$ -
<b>Stipulated Cost</b>	<b>\$ 17,999.23</b>

Fee (1)	\$ 200.00
Fee (2)	\$ 184.03
Fee (3)	\$ -
Fee (4)	\$ -
Fee (5)	\$ -
Fee (6)	\$ -
Fee (7)	\$ -
Fee (8)	\$ -
Fee (9)	\$ -

Interest Rate	1.48%
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Lease Year	Annual Interest	Annual Principal	Fuel Cost	Fuel Gallons	Fuel Fees	Maintenance Cost	Repair Order Count	Maintenance Fees	Accident Cost	Accident Count	Accident Fees	Resale	Resale Fee	Other Fees	Cost Of Ownership
Year 1	\$ 238.64	\$ 3,570.17	\$ 3,045	909	\$ (21.32)	\$ 76.00	3	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 64.13	\$ 6,985
Year 2	\$ 185.98	\$ 3,570.17	\$ 3,045	909	\$ (21.32)	\$ 157.00	5	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 64.13	\$ 7,013
Year 3	\$ 133.32	\$ 3,570.17	\$ 3,045	909	\$ (21.32)	\$ 279.00	4	\$ 12.00	\$ 1,789	1	\$ 35.22	\$ -	\$ -	\$ 64.13	\$ 8,907
Year 4	\$ 80.66	\$ 3,570.17	\$ 3,045	909	\$ (21.32)	\$ 1,109.00	6	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 64.13	\$ 7,860
Year 5	\$ 28.00	\$ 3,534.54	\$ 3,045	909	\$ (21.32)	\$ 509.00	4	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 64.13	\$ 7,172
Year 6	\$ -	\$ -	\$ -	-	\$ -	\$ -	0		\$ -	0	\$ -	\$ 15,000.00	\$ 50.00	\$ -	\$ (14,950)

\$ 22,987.37 Sub Total

Total Fees & Interest \$ 666.59 \$ (106.59) \$ 60.00 \$ 35.22 \$ 50.00 \$ 320.67 \$ 1,025.90 Total Fees & Interest

\$ 21,961.47 Grand Total



**Appendix A1  
State of Michigan  
DTMB - Vehicle & Travel Services**

2012 Ford F150 2DR 2WD Reg Cab 145WB XL MODEL # F1C

Base Purchase Price	\$ 24,412
Lease Term	72
In Service Date	7/13/2012
Annual Mileage	16,667
MPG	17
Fuel Cost (Gal.)	\$ 3.35

- |   |   |
|---|---|
| (99f) - 5.0L V8 FFV engine                        | (942-F) - Daytime running lights                            |
| (446) - 6-speed electronic automatic transmission | (56A) - Fleet incentive, CPA                                |
| (-STDE) - Standard emissions                      | (502A) - XL series order code                               |
| (XL9) - 3.55 axle ratio w/electronic locking dif  | (61T_F) - 36 gallon fuel tank pkg.                          |
| (T7B) - P235/75R17 all-terrain BSW tires          | (54T) - Manual telescoping trailer tow exterior             |
| (145) - Wheelbase, <145>in                        | (67T) - Trailer brake controller                            |
| (535) - Trailer tow pkg                           | (_S) Interior Color: Steel Gray                             |
| (18E) - 4" black tubular running boards           | (_A) Interior Fabric: Vinyl 40/20/40 split bench front seat |
| (52N-F) - Cruise control                          | (_A) Seat Type: Vinyl 40/20/40 split bench front seat       |

Discount (1)	\$ 6,606.00
Discount (2)	\$ 748.42
Discount (3)	\$ 254.53
Discount (4)	\$ -
Discount (5)	\$ -
Discount (6)	\$ -
Discount (7)	\$ -
Discount (8)	\$ -
Discount (9)	\$ -

Fee (1)	\$ 200.00
Fee (2)	\$ 153.03
Fee (3)	\$ 178.06
Fee (4)	\$ -
Fee (5)	\$ -
Fee (6)	\$ -
Fee (7)	\$ -
Fee (8)	\$ -
Fee (9)	\$ -

Interest Rate 1.83%

Stipulated Cost \$ 17,334



Lease Year	Annual Interest	Annual Principal	Fuel Cost	Fuel Gallons	Fuel Fees	Maintenance Cost	Repair Order Count	Maintenance Fees	Accident Cost	Accident Count	Accident Fees	Resale	Resale Fee	Other Fees	Cost Of Ownership
Year 1	\$ 289.58	\$ 2,865.81	\$ 3,284	980	\$ (22.99)	\$ 89.00	3	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 61.85	\$ 6,579.63
Year 2	\$ 237.28	\$ 2,865.81	\$ 3,284	980	\$ (22.99)	\$ 120.00	5	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 61.85	\$ 6,558.33
Year 3	\$ 184.98	\$ 2,865.81	\$ 3,284	980	\$ (22.99)	\$ 322.00	4	\$ 12.00	\$1,897.00	1	\$ 22.26	\$ -	\$ -	\$ 61.85	\$ 8,627.29
Year 4	\$ 132.68	\$ 2,865.81	\$ 3,284	980	\$ (22.99)	\$ 1,048.00	6	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 61.85	\$ 7,381.73
Year 5	\$ 80.38	\$ 2,865.81	\$ 3,284	980	\$ (22.99)	\$ 694.00	4	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 61.85	\$ 6,975.43
Year 6	\$ 28.08	\$ 2,852.06	\$ 3,284	980	\$ (22.99)	\$ 375.00	2	\$ 12.00	\$ -	0	\$ -	\$ -	\$ -	\$ 61.85	\$ 6,590.38
Year 7	\$ -	\$ -	\$ -	-	\$ -	\$ 150.00	1		\$ -	0	\$ -	\$15,000.00	\$50.00	\$ -	\$ (14,800.00)

**\$ 27,913** Sub Total

Total Fees & Interest **\$ 952.99** **\$ (137.94)** **\$ 72.00** **\$ 22.26** **\$50.00** **\$ 371.11** **\$ 1,330.42** Total Fees & Interest

**\$ 26,582** Grand Total