



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

CONTRACT CHANGE NOTICE

Change Notice Number **7**

to

Contract Number **071B4300004**

CONTRACTOR	BANK OF AMERICA
	231 S LaSalle St
	Chicago, IL 60467
	Joseph Kiss
	312-992-6916
	joseph.kiss@bofa.com
	CV0059727

STATE	Program Manager	Natalie Spaniolo	SW
		517-373-3696	
		spaniolon@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY				
PROCUREMENT CARD SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
January 1, 2014	December 31, 2016	2 - 1 Year	June 30, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
See Section 2.041		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	4 months	October 31, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$405,000,000.00	\$100,000,000.00	\$505,000,000.00		
DESCRIPTION				
Effective May 5, 2020, this contract is extended four (4) months and is increased by \$ 100,000,000.00 to cover continued support of and costs associated with COVID-19 emergency purchases without disruption. The revised contract expiration date is October 31, 2020.				
All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on May 5, 2020.				



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

CONTRACT CHANGE NOTICE

Change Notice Number **6**

to

Contract Number **071B4300004**

CONTRACTOR	BANK OF AMERICA
	231 S LaSalle St
	Chicago, IL 60467
	Joseph Kiss
	312-992-6916
	joseph.kiss@bofa.com
	CV0059727

STATE	Program Manager	Natalie Spaniolo	SW
		517-373-3696	
		spaniolon@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY

PROCUREMENT CARD SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
January 1, 2014	December 31, 2016	2 - 1 Year	February 29, 2020
PAYMENT TERMS		DELIVERY TIMEFRAME	
See Section 2.041		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	4 months	June 30, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$390,000,000.00	\$15,000,000.00	\$405,000,000.00		

DESCRIPTION

Effective February 25, 2020, this contract is extended 4 months; and is increased by \$ 15,000,000.00. The revised contract expiration date is June 30. 2020.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on February 25, 2020.



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

CONTRACT CHANGE NOTICE

Change Notice Number **5**

to

Contract Number **071B4300004**

CONTRACTOR	BANK OF AMERICA
	231 S LaSalle St
	Chicago, IL 60467
	Joseph Kiss
	312-992-6916
	joseph.kiss@bofa.com
	CV0059727

STATE	Program Manager	Natalie Spaniolo	SW
		517-373-3696	
		spaniolon@michigan.gov	
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY				
PROCUREMENT CARD SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
January 1, 2014	December 31, 2016	2 - 1 Year	December 31, 2019	
PAYMENT TERMS		DELIVERY TIMEFRAME		
See Section 2.041		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	2 months	February 29, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$385,000,000.00	\$5,000,000.00	\$390,000,000.00		
DESCRIPTION				
Effective December 10, 2019, this contract is extended 2 months; and is increased by \$ 5,000,000.00. The revised contract expiration date is February 29. 2020.				
All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on December 10, 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 **4**
 to
 Contract Number **071B4300004**

CONTRACTOR	Bank of America
	231 S LaSalle St
	Chicago, IL 60467
	Joseph Kiss
	(312) 992-6916
	joseph.kiss@baml.com
*****6609	

STATE	Program Manager	Natalie Spaniolo	DTMB
		(517) 373-3696	
		spaniolon@michigan.gov	
	Contract Administrator	Joshua Wilson	DTMB
		(517) 284-7027	
		wilsonj31@michigan.gov	

CONTRACT SUMMARY

PROCUREMENT CARD SERVICES - STATEWIDE			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2014	December 31, 2016	2 - 1 Year	December 31, 2018
PAYMENT TERMS		DELIVERY TIMEFRAME	
See Section 2.041		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
 N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>	1 Year	December 31, 2019
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$290,000,000.00	\$95,000,000.00	\$385,000,000.00		

DESCRIPTION

Effective October 24, 2017, this Contract is hereby increased by \$95,000,000.00 and extended one (1) year. The revised expiration date is December 31, 2019.

Please note that the Contract Administrator is hereby changed to Joshua Wilson (Section 2.021).

All other terms, conditions, specifications and pricing remain the same per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval dated October 24, 2017.



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 **3**
to
Contract Number **071B4300004**

CONTRACTOR	Bank of America
	231 S LaSalle St
	Chicago, IL 60467
	Joseph Kiss II
	312-992-6916
	joseph.kiss@baml.com
	*****6609

STATE	Program Manager	Natalie Spaniolo	DTMB
		517-373-3696	
		spaniolon@michigan.gov	
	Contract Administrator	Michael Kennedy	DTMB
517-284-6397			
Kennedym6@michigan.gov			

CONTRACT SUMMARY				
DESCRIPTION: Procurement Card Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2014	December 31, 2016	2 - 1 Year	December 31, 2016	
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	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 Years	<input type="checkbox"/>		December 31, 2018
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$150,000,000.00		\$140,000,000.00	\$290,000,000.00	

DESCRIPTION: Effective July 31, 2016 this contract is exercising two option years and is increased by \$140,000,000.00. The revised contract expiration date is December 31, 2018. In accordance with Section 2.025 – Notices, the Contractor Point of Contact has been updated. The State Contract Administrator is changed to Michael Kennedy (Section 2.021).

All other terms, conditions, specifications, and remain the same. Per agency request, contract agreement, DTMB Procurement approval, and State Administrative Board approval on July 26, 2016.

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B4300004
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Bank of America 135 South LaSalle Street Chicago, IL 60603	Nancy Cournaya	Nancy.p.cournaya@baml.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(312) 992-6295	6609

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Marsh Stansfield	(517) 373-0181	stansfieldm@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	samuelb@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Procurement Card Services - Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2014	December 31, 2016	(2) 1-Year Options	December 31, 2016
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		December 31, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$150,000,000.00		\$0.00	\$150,000,000.00	

DESCRIPTION:
 Effective May 11, 2015, the following amendments are hereby incorporated into the applicable sections of the current Contract referenced below;

1. Attachment A Section I – Corporate Billed Fees and Finance Charges – Cash Advance Fee – “As of the date of execution, the State does not allow Cash Advances by its Cardholders” is replaced by, “As of the date of execution, the State does not allow Cash Advances by its Cardholders. However, this policy is now negotiable for MiDEAL members.”

2. Attachment A Section II – Works Receipts Imaging –“The State will be charged monthly at the corporate account level” is replaced by, “The State will be charged monthly at the corporate account level. However, this policy is now negotiable for MiDEAL members.”

3. Attachment A Section III - Signing Bonus Incentive – Additional language, “This section is not applicable to MiDEAL members.”

Please note the Contract Administrator has been changed to Brandon Samuel. Also please note the Program Manager has been changed to Marsha Stansfield. All other terms, conditions, specifications, and pricing remain the same, per Contractor and agency Agreement, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B4300004
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Bank Of America 231 S. LaSalle St. Chicago, IL 60467	Nancy Cournaya	Nancy.p.cournaya@baml.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	312-992-6295	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Natalie Spaniolo	517-373-3696	spaniolon@michigan.gov
BUYER	DTMB	Lance Kingsbury	517-284-7017	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Procurement Card Services-Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
3 years	January 1, 2014	2 one year	December 31, 2016
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
		\$150,000,000.00		

Effective immediately, the following Amendment is hereby incorporated into the contract. All other terms, conditions, pricing, and specifications remain the same. Per vendor and agency agreement and DTMB Procurement approval.

AMENDMENT TO BANK OF AMERICA CORPORATE CARD SERVICE AGREEMENT

THIS AMENDMENT (the "Amendment") by and between State of Michigan ("Company") and FIA Card Services, N.A., a Bank of America company ("Bank of America"), and amends the Bank of America Corporate Card Service Agreement attached as Attachment "B" to the State of Michigan Electronic Payment Card Services Statewide Procurement Card Contract No. 071B4300004 contract between Company and Bank of America (hereinafter "the parties") effective January 1, 2014 (the "Agreement").

WHEREAS, the parties desire to add to and modify certain terms of the Agreement;

NOW, THEREFORE, for valuable consideration, the parties hereby agree as follows:

1. DEFINITIONS

Terms capitalized herein and not otherwise defined shall be given the meaning ascribed to them in the Agreement.

2. AMENDMENTS

Services and products as defined in your Agreement and provided by FIA Card Services, N.A., will be provided by Bank of America, N.A., **effective October 1, 2014 ("Amendment Effective Date")**. Your Agreement with all rights and obligations will be assigned to Bank of America, N.A., on October 1, 2014. Furthermore, to the extent the Agreement is governed by the laws of the State of Delaware, effective October 1, 2014, to the extent this Agreement and the Account, as well as the Bank's rights and duties regarding this Agreement and the Account, are not covered by the laws respecting national banking associations, this Agreement and the Account, as well as the Bank's rights and duties regarding this Agreement and the Account, will be governed by the laws of the State of North Carolina, without reference to that state's principles of conflicts of law, regardless of where Company resides or where a Cardholder uses the Account. If your Agreement is governed by the laws of a state other than Delaware, there will be no change to governing law.

3. RATIFICATION

All of the terms of the Agreement not expressly modified herein shall continue in full force and effect and are hereby ratified by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date shown above.

AUTHORITY: Act 431 of 1984
 COMPLETION: Required
 PENALTY: Contract will not be executed unless form is filed

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

**NOTICE
 OF
 CONTRACT NO. 071B4300004
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Bank of America 231 S. LaSalle St. Chicago, IL 60467	Nancy Cournaya	Nancy.p.cournaya@baml.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	312-992-6295	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Natalie Spaniolo	517-373-3696	spaniolon@michigan.gov
BUYER:	DTMB	Lance Kingsbury	517-241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Procurement Card Services - Statewide			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	January 1, 2014	December 31, 2016	2, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$150,000,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07113200050. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

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. 071B4300004
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Bank of America 231 S. LaSalle St. Chicago, IL 60467	Nancy Cournaya	Nancy.p.cournaya@baml.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	312-992-6295	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Natalie Spaniolo	517-373-3696	spaniolon@michigan.gov
BUYER:	DTMB	Lance Kingsbury	517-241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Procurement Card Services - Statewide			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	January 1, 2014	December 31, 2016	2, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$150,000,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07113200050. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:

Bank of America

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kevin Dunn, Services Division Director

Name/Title

DTMB Procurement

Enter Name of Agency

Date



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

Contract No. 071B4300004
Electronic Payment Card Services – Statewide Procurement Card

Buyer Name: Lance Kingsbury
Telephone Number: 517-241-3768
E-Mail Address: kingsburyl@michigan.gov



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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.

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

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.

ePayables means electronic payables system that is initiated and managed within an end-user organization. Typically the end-user organization has its own process for initiating purchase, invoice receipt, and approval and then utilizes the procurement card for payment.

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).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

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.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

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

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

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

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

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 to provide the State of Michigan (the State) with a highly accepted card program that will facilitate the ability to make purchases through the use of a no fee, no cost, revenue sharing procurement card program with the State. This program will be available to eligible governmental entities including State of Michigan agencies, departments, legislative and judicial branches, political subdivisions, (counties, school boards and districts, municipalities, or other public agencies or authorities), community colleges, institutions of higher education, commissions, governmental councils, boards, bureaus, committees, or other governmental establishment or official. Revenue and incentive rates must be calculated on the total cumulative spend for all entities participating in this cooperative program and must be proportionately allocated.

The period from Contract award through December 31, 2013, will be for implementation and transition for the Contractor; no payment will be made to the Contractor during this period. The Contractor must begin providing all services, without interruption, on January 1, 2014.

The procurement card program will be used as a method to:

- 1) Increase the efficiency of low dollar purchases by eliminating or reducing manual steps, costly paperwork and administrative overhead;
- 2) Ensure sales tax is not paid for the purchase of goods;
- 3) Provide a flexible and automated, yet accountable, purchase and payment process for these lower dollar transactions;
- 4) Provide the State with a purchasing tool that provides useful spending measurement information by vendor or merchant category code;
- 5) Electronically interface between the State and the Contractor’s financial and accounting processes in the most efficient and effective manner;
- 6) Ensure efficient run time on transaction payment and maximize revenue sharing opportunities;
- 7) Provide the State with data analysis of direct voucher spend as provided to the Contractor from the State’s Michigan Administrative Information Network (MAIN) accounting system, to merchant/retailers that accept the Contractor’s credit card. This analysis is to report opportunities to expand the credit card program as a payment method within the State;
- 8) Provide tools for an automated interface between transactions and existing contracts maintained on the State’s procurement system electronically; and
- 9) Provide the State with transaction auditing methodology.

1.012 Background

The State’s Procurement Card Program serves the executive, legislative, and judicial branches of government, which is divided into 23 departments or agencies. Under the existing contract, approximately 2,800 accounts are active in any one month time period. The program provides the ability to make transactions with a \$2,500.00 single transaction limit. Annual spend for the last three fiscal years in the program averaged \$43.5million with approximately 158,000 transactions per year. This spend is detailed below:

Total Spend		
FY 2010	FY 2011	FY2012
\$39,645,494.00	\$43,290,946.00	\$47,687,446.00
150,479 Transactions	155,728 Transactions	167,018 Transactions

This volume is to be used as a guide and represents no commitment or guarantee of expenditure.



Currently the State is utilizing a web-based system maintained, managed, and hosted by the Contractor. A Statewide Procurement Card Administrator provides program support and direction to all departments with full access to all functionality. Department Program Administrators typically maintain cardholder accounts at the Agency level, with some duties performed by the Contractor. Agency duties currently include creating new accounts, name changes, transaction spend limits, and closing accounts. Each Cardholder has account coding assigned that is applied to their individual transactions. The State uses a two-week purchasing cycle that begins on the Saturday following a State payday and ends on the Friday following the next payday. During the "current" cycle and 11 days after the close of a cycle the account coding assigned to the individual transaction can be modified on-line by authorized employees to ensure the appropriate funding source for the transaction is applied. Twelve days after the close of a cycle, an electronic interface ASCII text data file is created. Transactions are locked in the system as posted, restricting them from future modifications. The file contains each transaction for a previously closed cycle; the data is formatted to the State's MAIN accounting system data file format. Data file layout must be developed to meet the State's MAIN R*STARS account system format. The import posts each transaction and is debited to the assigned account and credited to a central account. DTMB is responsible for payments to the Contractor for all charges in the program. This import file must balance to the spend total for the cycle. Failure to provide a viable interface by a date agreed upon by the Contractor and State may result in cancellation of the Contract.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor must provide the State a highly accepted card program that will facilitate the ability to make purchases through the use of a no fee, no cost, revenue sharing procurement card program, according to the specifications listed in this Contract.

1.022 Work and Deliverable

The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. The work and deliverables are divided into four sections: (A) Program Specifications, (B) Card Processes and Specifications, (C) Program Enhancements, and (D) Environment.

A. Program Specifications

1. Acceptance:

The Contractor's issued cards must be accepted among merchants worldwide and especially in the State, both Upper and Lower Peninsulas. The State must have the option to use MasterCard and/or Visa.

2. Billing

The State currently cycles bills every 14 days. A statement is created in-house from the purchasing card database. The Contractor must provide electronic billing. The program must have the ability to alter the cycle at fiscal year-end close.

- a. Contractor must have a billing dispute resolution process.
- b. Contractor must have a process to balance with the State billing cycle.
- c. The State may be use a billing cycle other than the current two-week cycle.

3. Controls/Restrictions

CASH ADVANCES ARE STRICTLY PROHIBITED along with any type of banking financial transactions such as money orders, checks, bonds or transfers. The Contractor must provide controls that will prevent the use of the card for cash advances, or for purchasing commodities or services with certain vendor types.

For each cardholder, the State must be able to select predetermined purchase limits and be able to determine acceptable Merchant Category Codes that cardholders may use.



- a. Contractor must have the capability of issuing purchasing cards with the following controls and the ability to modify these limits on accounts:
 - Spend limit per transaction
 - Spend limit per cycle
 - Vendor/merchant category type restrictions
- b. Contractor must have level of controls at the cardholder level.

4. Customer Service

Contractor must maintain a non-automated 24x7x365 help line, located in the United States, for cardholder problems and emergencies. This help line must be available at no additional cost to the State.

- a. The Contractor must have a process for providing individual cardholder customer service.
- b. The Contractor must have a process for reporting lost or stolen cards.
- c. The Contractor must provide training and support for their staff that would be dedicated to the State's customer support for the Statewide Program Administrator and the Department Administrators.
- d. The Contractor must not utilize a third party for its help line.
- e. The Contractor must have a procurement card service assistance back-up system if the 24-hour help line is down.
- f. The Contractor must have internal customer satisfaction measurements on their performance as a procurement card issuer.

5. E-commerce

Currently the State is pursuing electronic fund payments and an e-procurement system. The Contractor must have the capability to interface with the State's e-procurement system. The State is looking into an Enterprise Resource Planning (ERP) solution (MAIN/RStars) and the Contractor's solution must have the ability to interface with this.

6. ePayables

The State reserves the right as an additional option under this Contract to use the Contractor's ePayables functionality.

7. Fees

The Contractor must not charge the State solely for the purpose of establishing an account regardless of the purchasing activity on that account.

8. Implementation

The Contractor must be able to transition, if necessary, the existing program to a similar program by January 1, 2014, including interfacing transactions into the State's accounting system. Failure to provide a viable interface by a date agreed upon by the Contractor and State may result in the cancellation of the Contract. Purchases utilizing this system must begin on this date.

9. Liability

The State must only be liable for the use of credit cards by authorized users provided that the use is within the cycle and single purchase limits are established for the specific account, and the use is processed through a merchant whose Standard Industry Classification Code, (SIC Code) is approved for participation (per the State's cardholder initial application).

- a. The Contractor must have policies on liability for unauthorized purchases.
- b. The Contractor must be Sarbanes Oxley compliant.



10. Promotional Materials

The selling of mail lists containing the names of cardholders is absolutely prohibited. Promotional materials may only be permitted with pre-approval of the CCI.

11. Master File

The Contractor's Cardholder master file must contain, at a minimum, the following information:

- Cardholder name
- Secondary name
- Account address
- Phone number
- Alpha/numeric accounting codes
- Single transaction limit
- Cycle spending limit
- Approved SIC or merchant codes
- Expiration date
- Status

12. Payment

The Contractor must accept payment through the use of electronic funds transfer (EFT) from the State. Payments must be made directly to the Contractor, or to the bank account established by the Contractor to receive payments from the State. The responsibility to make payments will rest with the State, and not the individual employee/cardholder.

13. Database Technology

The Contractor must be able to provide a web-based customer accessible system and maintain this system with flexible capabilities and/or upgrades. The Contractor must conduct routine maintenance during a time period that does not interrupt the State usage. The Contractor must issue announcements to the State regarding times and dates for routine maintenance as well as when the Contractor is experiencing technical problems. Other than scheduled routine maintenance, the State, and MiDeal participating entities must have 24x7x365, to access the Contractor's data management system.

The Contractor must provide reporting software that can support customizing needs of the State and MiDeal participating entities at no additional charge to the State.

A complete description of the Contractor's equipment necessary to run software must be included and, if required, any cost for the equipment. The State is a Microsoft Windows XP based organization.

- a. **Upgrades/Advanced Technology:** The Contractor must make future upgrades in its systems and processes to reflect advancements in technology, hardware, and software at no cost to the State and no reduction in revenue sharing. All such upgrades must be announced in advance of any change and agreed to by the State.
- b. **Financial System Integrations:** Contractor must describe the method(s) of transaction transmission. Detail the general ledger capabilities, accounting code structure and length (State's accounting structure is 15 fields and 73 characters), system capability to separate transactions into multiple account coding structures, and account code modifications to a transaction or account holder (see Fields table "Detail Transaction Record" for additional information).
- c. **Method of Transactional Transmission:** The Contractor must write an automated interface program to support the upload of procurement card transactions into the State's MAIN Financial Accounting and Control System (FACS) accounting system.

A new interface may need to be developed when the State completes the bidding of the ERP. The interface would need to include the following file layout:



Fields

Batch Header Record

Description	Field Length
Batch Agency	3
Batch Date	8
Batch Type	1
Batch Number	3
Batch Sequence Number	5
Batch Operator ID	8
Batch Operator Name	20
Batch Operator Class	2
Batch Terminal Identification	4
Effective Date	8
Disbursement Method Indicator	1
Payment Distribution Type	2
Fast Entry	1
Batch Document Hold Flag	1
Batch Count Entered	1
Batch Status	1
Batch Header Count Switch	1
Batch Last Sequence Number Used	5
Batch System Date	5
Batch Master File Indicator Switch	1
Filler	7
Entered Batch Count Numeric	5
Entered Batch Amount Numeric	13
Filler	5
Computed Batch Count Numeric	5
Computed Batch Amount Numeric	13
Approval Required to Post Indicator	1
All Documents Approved	1
Filler	619
Totals	750

Detail Transaction Record

Description	Field Length	Accounting Codes
Batch Agency	3	
Batch Date	8	
Batch Type	1	
Batch Number	3	
Batch Sequence Number	5	
Operator ID	8	
Terminal Identification	4	
Effective Date	8	
Appropriation Year	2	
Disbursement Method Indicator	1	
Capitalize Indicator	1	
Transaction Code	3	
Modifier	1	



Description	Field Length	Accounting Codes
Reverse Indicator	1	
Agency	3	3
Recurring Transaction Index	6	
Index	5	5
Appropriation Number	5	
Fund	4	
Program Cost Account	5	5
Comptroller Object	4	4
Agency Object	4	4
Project Number	6	6
Project Phase	2	2
Grant Number	6	6
Grant Phase	2	2
Sub Grantee	14	
Agency Code 1	4	4
Agency Code 2	4	4
Agency Code 3	6	6
Agency General Ledger Account or Subsidiary	8	8
Multipurpose Code	10	10
General Ledger Account	4	
Vendor Number	10	
Vendor Suffix	3	
1099 Indicator	1	
Invoice Number	14	
Invoice Date	8	
Document Date	8	
Current Document Number	8	
Current Document Suffix	3	
Reference Document Number	8	
Reference Document Suffix	3	
Due Date	8	
Service Date	8	
Warrant Number	9	
Payment Distribution Type	2	
Property Number	10	
Debt/Investment Issue Number	9	
Fund Control Override Flag	1	
Contract Number	10	
Transaction Amount	13	
Discount Amount	13	
Description	30	
Cash Receipt Payment Type	1	
Bank Number	13	
Discount Date	8	
Discount Terms	2	
Penalty Date	8	
Penalty Terms	2	
Interest Terms	5	
Penalty Amount	13	
Vendor Name	50	



Description	Field Length	Accounting Codes
Address Line 1	50	
Address Line 2	50	
Address Line 3	50	
Address Line 4	50	
City	20	
State	2	
Zip Code	9	
Doc Agency	3	
Filler	13	
Carrier Code	2	
Country Code	3	
Bank ID	3	
Appropriation Year	4	4
Document Year (Fiscal Year)	4	
Filler	53	
Document Year (Fiscal Year)	2	
Totals	750	73

- d. Technical Support: The Contractor must provide on-going technical support related to program performance, data integrity, interface file processing, transaction approval or disputing, report creation, or query functionality. The Contractor must provide a dedicated technical support person for these items.
- e. Archiving and Retrieval: The Contractor must have data archiving and retrieval capabilities (all data pertaining to the State obtained by Contract or subcontract is the sole property of the State).
- f. The Contractor must have a Disaster Recovery Plan in place for the duration of the Contract. Describe the Bidder's Disaster Recovery process including anticipated time frames to restore normal operations once the disaster situation has been resolved. Proposal must include a recovery plan in the event of a major disaster that disables most, or all, of the Contractor's processing capabilities for the State. A major disaster includes, but is not limited to:
 - A hardware system failure/collapse;
 - A software system failure/collapse;
 - Any natural disaster; and/or
 - Total loss of electrical/backup power.
- g. The Contractor must comply with Section 508 of the Rehabilitation Act of 1973, 29 U.S.C requiring disabled persons to have access to the features of IT equipment and programs.
- h. The Contractor must set spend limits on accounts that can be monitored.
- i. The Contractor must assign chart of account code(s) to a transaction.
- j. The Contractor's program must not allow the use of accounting codes that have not been established in the Contractor's system.
- k. The Contractor's program must allow assignment of Merchant Category Code (MCC) groups to cardholders in real time.
- l. The Contractor's program must allow for modifying account coding assigned to a transaction or an account holder in real time.



- m. The Contractor must prevent a user from altering account allocation that allows transactions to save if the transaction is out of balance, (i.e. purchase amount does not equal the allocated amount).
- n. The Contractor must be able to provide mass updates to the accounting structure, cardholder account coding, spend limits, and billing address.
- o. The Contractor's system must allow an administrator to create or delete organizational hierarchies, assign or move Cardholders and all historical transaction data for that Cardholder to a location within the hierarchy.
- p. The Contractor's system must limit access to users by hierarchy levels.
- q. The Contractor must allow the State's Program Administrator(s) the ability to create, modify, reorder, or close credit card accounts in real time.
- r. The Program Administrator will create or modify system access by administrators, managers, reviewers, or cardholders.
- s. The Contractor must allow the State's administrators to have the capability to increase/decrease transaction and cycle limits electronically in real time.
- t. The Contractor must allow the State the ability to update cardholder accounts including address and/or name and reissue the card automatically for any changes that affect the appearance of the card at no cost to the State.
- u. The Contractor must allow the State the ability to dispute transactions and track the status on line.
- v. The Contractor must allow the State the ability to monitor authorizations/declines in real time.
- w. The Contractor must allow the State the ability to check current balances on accounts in real time.
- x. The Contractor must have the capability to receive, process, and report on Level II and III data.
- y. Additional Services: Any additional services or products that may be offered to the State are listed in **Attachment A**.

14. Training

- a. The Contractor must assist the State in the development of a training program and to provide materials and assistance to inform the departments and individuals participating in the State's Procurement Card Program.
- b. The Contractor must provide on-site training for the Department Program Administrators.
- c. The Contractor must provide online program training modules that are tailored to the specifications of the State program, polies and procedures. The Contractor must have the capability to monitor and report on employee training.

B. Card Processes and Specifications:

1. Issuance

The State has established internal rules and procedures for issuance, security, and operation matters related to the Procurement Card Program. The Contractor must assist the State with modification, enhancement, and implementation of these rules upon request by the CCI. Departments will certify to the CCI, prior to the issuance of cards that it has written procedures in place regarding authorized use of the cards. The system must be capable of real time card issuance, re-issuance, activation,



and temporary or permanent termination of cards and be able to accommodate the ever-increasing number of cards.

a. The Contractor must deliver all cards to the State in three business days or less.

2. Replacement

The Contractor must replace lost or stolen cards at no cost to the State within three business days.

3. Cancellation

The State must not be liable for charges incurred after verbal or written notice to the Contractor to cancel a card. As part of its procedures, the State will recover credit cards whenever possible from employees upon retirement, discharge, or resignation.

4. Card Format Design

The Contractor's card format must be distinctive so that it readily identifies the cardholder as an employee of the State.

a. The Contractor must provide customized cards to the State's specifications. The following data, at a minimum, is required on the card:

- State of Michigan
- Phrase: For Official Use Only – Tax Exempt
- Cardholder Name
- Agency of the Cardholder
- The Contractor's free "help" telephone number printed on the reverse side of the card

b. The Contractor must be able to accommodate the State's need for different designs beyond the customized card.

C. Program Enhancements:

Multiple Programs

The Contractor must have the capability to provide several "companies" for related, but separate, State programs. Currently there is a Personal Liability program for employee travel, and several separate small programs. These programs will be tied overall to the primary program, but can function separately with individual billing cycles and rebate programs.

D. Environment

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

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

Enterprise IT Policies, Standards and Procedures:

http://michigan.gov/dmb/0,4568,7-150-56355_56579_56755---,00.html

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



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

Enterprise IT Security Policy and Procedures:

http://www.michigan.gov/documents/dmb/1310_183772_7.pdf

http://michigan.gov/documents/dmb/1310.02_183775_7.pdf

http://www.michigan.gov/documents/dmb/1325_193160_7.pdf

http://michigan.gov/documents/dmb/1355.00_281427_7.pdf

http://www.michigan.gov/documents/dmb/1340_193162_7.pdf

http://michigan.gov/documents/dmb/1350.10_184594_7.pdf

The State's security environment includes:

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

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

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

IT Strategic Plan:

<http://michigan.gov/dmb/0,4568,7-150-56355---,00.html>

IT eMichigan Web Development Standard Tools:

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

SUITE:

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://inside.michigan.gov/dtmb/wr/epm/suite/Pages/ProjectManagement.aspx>

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The following are considered Key Personnel on this Contract:

Senior Card Account Manager: Nancy Cournaya
 Senior Client Manager: Joe Kiss
 Sales Support Associate: Marci Enriquez
 Treasury Solutions Officer: Ken Harron
 Client Level Support: Jane Ritter

1.040 Project Plan

1.041 Project Plan Management

The Contractor must provide a recommended implementation and transition plan, starting from the awarding of the Contract, that details key elements, support resources, card issuance, administrator access training, hierarchy creation, chart of accounts creation, interface file creation and testing, chart of tasks, timelines, and proposed completion dates.



The Contractor must provide a project work plan detailing steps, responsibilities and performance dates for each step of the implementation.

Contractor must provide a plan for the integration of the proposed procurement card program with State accounting system, including the data elements transmitted between systems. A detailed list of all functions and access available to the State's Procurement Card Administrator must be included in the plan and submitted with the proposal. The State requires three successive successful tests of the interface in order to allow the interface to be approved. Failure to provide a viable interface by a date agreed upon by the Contractor and State may result in cancellation of the Contract.

The Contractor must carry out the program implementation and ongoing services under the direction and control of the DTMB, Office of Financial Services (FS).

Although there will be continuous liaison with the Contractor team, the DTMB-FS Statewide Procurement Card Administrator will meet with the Contractor's Program Manager for the purpose of reviewing performance and providing necessary guidance to the Contractor in solving problems which arise.

The Contractor must submit brief written monthly summaries of performance which outline the work accomplished during the reporting period (in this context reporting period is the prior month); work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought the attention of the DTMB-FS Statewide Procurement Card Administrator; and notification of any significant deviation from previously agreed upon work plans. These reports must be provided monthly until such time as the program is running successfully and at the State DTMB-FS Operations Director's direction are determined to no longer be necessary. The Contractor and the DTMB-FS Operations Director, on behalf of the State, must continually evaluate the performance, efficiency and effectiveness of the program utilizing at least monthly status phone calls and an annual site visit by Contractor program management.

Within 10 working days of the execution of the Contract, the Contractor must submit to the DTMB-FS Operations Director, for final approval, a work plan. This final implementation plan must be in agreement with the plan proposed by the Contractor and accepted by the State, and must include the following:

- a) The Contractor's project organizational structure.
- b) The Contractor's staffing table with names and title of personnel assigned to the project.
- c) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- d) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

1.042 Reports

The Contractor must provide reports in a variety of formats. The Contractor must have the ability to provide to the State or agencies, upon request, a copy of any individual transaction receipt.

- a. The Contractor must have the capability to provide customized reports.
- b. The Contractor must have the capability to capture data from a purchasing card transaction.
- c. The Contractor must have the capability for the State to perform ad hoc queries on the Contractor's database.
- d. The Contractor must have the capability for the State to schedule reports to run at specific intervals without recreating the report each time.
- e. The Contractor must have the capability to produce reports related to auditing changes to the program, card status, card declines, cardholder information, system access, transaction detail (including level 3 data), air travel activity, and hierarchy information.
- f. The Contractor must have the capability for using filters on the reports to customize the data produced.



- g. The Contractor must have the ability for a user to create a report and share it with other users.
- h. The Contractor must have the ability to create a standard report that identifies transactions that were potentially split to circumvent limits by the same or different cardholders.
- i. The Contractor must have the capability to add one or more signature lines on a report. The State requires cardholders and supervisor to sign and date each transaction detail.
- j. The Contractor must provide, at a minimum, primary standard reports for commercial card management. Report types are to include, but are not limited to:
 - New Accounts
 - Account status including active, new, closed, inactive, suspended, lost/stolen
 - Card maintenance, audit trail for changes
 - Merchant Category Code (MCC) Groups
 - Cardholder account status, limits, MCC Groups, employee contact information, etc.
 - MCC Groups with cardholder accounts
 - Spend volume reports (Daily, monthly, yearly, cycle period, specific date range)
 - Dispute and fraudulent transactions, recovery status, write-off amount, close date
 - Spend by vendor
 - Cards with no use/low use that includes the last day the card was used
 - Users and their accesses
 - Hierarchy
 - Declined transactions including reason for the decline
 - Air travel activity including traveler, flight origin, and flight destination

1.050 Reserved

1.060 Pricing

1.061 Pricing

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

All prices/rates will be firm for the duration of this Contract. No price changes will be permitted. For authorized Services and Price List, see Attachment A.

1.062 Price Term

Prices and rebate grid quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

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

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

1.064 Reserved

1.070 Additional Requirements



1.071 Additional Terms and Conditions specific to this Contract

The State's data must be encrypted when transmitted across any network. The types of transmission may include client-to-server, server-to-server communication, as well as any data transfer between core systems and third party systems.

Where the covered device is reachable via web interface, web traffic must be transmitted over Secure Sockets Layer (SSL), using only strong security protocols, such as SSLv3, Transport Layer Security (TLS).

Non-web data traffic should be encrypted via application level encryption. Where application database resides outside of application server, connection between the database and application must be encrypted using FIPS compliant cryptographic algorithms.

Where application level encryption is not available for non-web data traffic, implement network level encryption such as IPSec or SSH tunneling. Encryption should be applied when transmitting data between devices in protected subnets with strong firewall controls.

All implementations must be in compliance with current FISMA requirements such as FIPS 140-2 (Security Requirements for Cryptographic Modules) or current Federal standards at time of system implementation.



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of three years beginning January 1, 2014, through December 31, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (2.001, Contract Term, 2.003, Legal Effect, 2.044(c), Invoicing and Payment – In General, 2.130, Insurance, 2.140, Indemnification, 2.150, Termination/Cancellation, 2.211, Governing Law, 2.220, Limitation of Liability);
- (b) The most recent Statement of Work related to this Contract;
- (c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the Contract documents, including the Corporate Card Service Agreement;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
- (f) Bidder Responses contained in any of the RFP documents.



2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is ruled invalid or unenforceable by a court of competent jurisdiction, it will be severed from the Contract and all remaining provisions will remain in 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

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and Department of Technology, Management and Budget; Office of Financial Services (OFS) (collectively, including all other relevant State 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:

Lance Kingsbury
 DTBM-Procurement
 Mason Bldg, 2nd Floor
 P.O. Box 30026
 Lansing, MI 48909
 kingsburyl@michigan.gov
 Phone: (517) 241-3768
 Fax: (517) 335-0046

2.022 Contract Compliance Inspector

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer of DTMB-Procurement, in consultation with DTMB OFS, 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:



Natalie Spaniolo, Director
DTMB
Financial Services Operation Division
320 S. Walnut
Lansing, MI 48933
spaniolon@michigan.gov
Phone: (517) 373-3696
Fax: (517) 241-4856

2.023 Project Manager

The following individual will oversee the project:

Marsha Stansfield, Statewide Procurement Card Administrator
DTMB
320 S. Walnut
Lansing, MI 48933
stansfieldm@michigan.gov
Phone: (517) 373-0181
Fax: (517) 241-4856

However, management of the project implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, or specifications of this Contract, including pricing and specifications.**

2.024 Change Requests

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in scope and the Contractor is not entitled to additional compensation or time. If the Contractor begins 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.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effect on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change. The Contractor is not entitled to payment for any work or services the Contractor provides before it receives a duly executed Contract Change Notice.

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

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

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.

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

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

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 Reserved**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 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) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State 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.
- (d) 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, and 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.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

2.064 Reserved

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, and with at least five business day notice, 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. The Contractor will provide access during normal business hours.

2.067 Contractor Return of State Resources

The Contractor must return to the State any State-furnished, 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 expected.

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. The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Services or Deliverables to any party other than the Contractor.

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 Reserved

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State facilities (including hours of operation) used by the Contractor in the course of providing the



Services. Contractor must not, without the prior written consent of the State, use any State facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

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

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

2.092 Reserved

2.093 PCI Data Security Standard

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

2.100 Confidentiality

2.101 Confidentiality

A party (Discloser) may disclose to the other party (Recipient) Confidential Information. As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (a) subject to disclosure under the Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq*;
- (b) now available or becomes available to the public without breach of this Contract;
- (c) authorized by the Discloser in writing to be shared with a third party by the Recipient;
- (d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
- (e) produced pursuant to federal or state law; or
- (f) independently developed by the Recipient without reference to Confidential Information of the Discloser.



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 if (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 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 immediately after becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.105 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.

2.106 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 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. 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

(a) For seven 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 before examining the Contractor's books and records. 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.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract must be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for three years after the later of the expiration date or final payment under 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 deficiencies, concerns, and recommendations in the audit report.

2.115 Errors

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

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



2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
- (b) The Contract Appendices, Attachments, and Exhibits identify the 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 the 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 equipment, software, or other Deliverable (including equipment, software, and other Deliverables manufactured, re-marketed, or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

2.122 Reserved

2.123 Reserved

2.124 Reserved

2.125 Reserved

2.126 Equipment to be New

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

2.127 Reserved



2.128 Consequences for Breach

In addition to any remedies available in law, it is a material breach of the Contract if the Contractor breaches any of the warranties contained in **Section 2.120**.

2.130 Insurance

2.131 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A -" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(h) The Contractor must provide, within five business days, written notice to the Chief Procurement Officer of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

(i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(j) The Contractor is responsible for the payment of all deductibles.

(k) 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 Michigan Attorney General.

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



(i) Commercial General Liability

Minimal Limits:

\$2,000,000.00 General Aggregate Limit other than Products/Completed Operations;
 \$2,000,000.00 Products/Completed Operations Aggregate Limit;
 \$1,000,000.00 Personal & Advertising Injury Limit; and
 \$1,000,000.00 Each Occurrence Limit.

Additional Requirements:

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 the insurance policy contains a waiver of subrogation by the insurance company.

(ii) Umbrella or Excess Liability

Minimal Limits:

\$5,000,000.00 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

Subrogation will be waived except with respect to workers compensation insurance.

(iii) Motor Vehicle

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

(v) Workers' Compensation Insurance

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable.

(vi) Employers Liability

Minimal Limits:

\$100,000.00 Each Incident;
 \$100,000.00 Each Employee by Disease
 \$500,000.00 Aggregate Disease

(vii) Employee Fidelity (Crime)

Minimal Limits:

\$1,000,000.00 Employee Theft Per Loss



Additional Requirements:

Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

(viii) Professional Liability (Errors and Omissions)

Minimal Limits:

\$3,000,000.00 Each Occurrence

\$3,000,000.00 Annual Aggregate

2.140 Indemnification

2.141 General Indemnification

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, alternative dispute resolution proceedings, 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 either of them may be liable.

2.142 Reserved

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

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, alternative dispute resolution proceedings, 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 termination of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or termination.

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. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification 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, including attorneys' fees, 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 including attorneys' fees.

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.



In the event of a strike or walk-out by employees of the Contractor or any Subcontractor(s), Contractor must continue to provide adequate staffing and resources necessary to perform all obligations under the Contract. Failure to do so will be considered a material breach of the Contract that 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 requested by the State, (d) security concerns or (e) 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 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' 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 because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

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 will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
 - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect deliverable(s) or other State property in the Contractor's possession;
 - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
 - (vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.101, Confidentiality.

(b) If the State terminates this Contract under Section 2.153, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.158 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.



2.160 Reserved

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 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**. All Contract terms and conditions are applicable during the transition period.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by 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 format unless otherwise requested 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 Reserved

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 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 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

- (a) The Contractor must submit any claim related to this Contract to the State under Section 2.025 Notices, together with all supporting documentation for the claim.
- (b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.
- (c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

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 Chief Procurement Officer, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
 - (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within 60 days, the Chief Procurement Officer, 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 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 the State's right to terminate the Contract as provided in **Section 2.150**.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of this Contract, Contractor must comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 *et seq.*, as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. 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, 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 Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, as amended, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, as amended 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 MCL 423.322. 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 and any Subcontractor must comply with all applicable state and federal laws.

2.204 Reserved

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 and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. 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 Required Disclosures

(a) Within 10 days after receiving notice of any pending or threatened action, claim, order, decree, litigation, investigation, arbitration or other alternative dispute resolution proceeding, or any other proceeding by or before any governmental authority, arbitrator, court or administrative agency (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.
- (v) A Proceeding involving revocation or suspension of any license Contractor must have to perform under this Contract.

(b) If any Proceeding would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

(c) The Contractor must notify the State of any actions or proceedings referenced in Section 2.233, Bankruptcy and Insolvency, within 14 days of initiation; provide the State with a copy of all documents used to initiate any such actions or proceedings; and keep the State informed of the progress of the action or proceeding.

2.232 Call Center Disclosure

The Contractor's call center will be located in the United States and the Contractor, at the request of any inbound caller, will identify the location in which the call center is located.

2.233 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:



- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary bankruptcy petition is filed against the Contractor;
- (c) the Contractor becomes insolvent or 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 provide the Deliverable(s) under this Contract.

The Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

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 SLAs

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



(c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Reserved

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, 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 any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

2.250 Approval of Deliverables

2.251 Delivery 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 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 opportunities (the original and two 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 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

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

The Contractor retains its ownership rights to all proprietary materials (i.e. User manuals, guides, etc.) The Contractor also retains all rights and titles to products and processes it has or could develop, improve, or modify during the Contract period for its use in providing its services to its clients and in the conduct of its usual and customary business. The State will, however, acquire rights to Deliverables that are for its exclusive use and is specifically created in conjunction with this Contract.

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 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/dit>.

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 Extended Purchasing Program

The Contract will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

Upon written agreement between the State and Contractor, this Contract may also be extended to other states (including governmental subdivisions and authorized entities).

The Contractor must supply all Services at the established Contract prices and terms.

Contractor must submit billing statements to, and receive payment from, extended purchasing program members on a direct and individual basis.

Contractor must submit, to the CCI, an itemized transaction report, which includes at a minimum, the name of the MiDeal member or other state and the total dollar volume in transactions.

The itemized transaction report is due before the last day of the month following the end of the rebate quarter. The rebate quarters are March through May; June through August; September through November; and December through February.

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, release, or disposal of which is regulated by 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 (i) the material is a Hazardous Material that may present a substantial danger, and (ii) 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, release, 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 reasonably 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, release, disposal, processing, transport, and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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



2.300 Other Provisions

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

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

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



Attachment A – Fees, Charges, and Rebates

I. General Product Fees and Charges

General Fees	
Annual Card Fee	Waived
Logo Fee (Choose one color from the following six colors: 1) black; 2) white; 3) blue; 4) red; 5) green; 6) burgundy).	Fee Waived
Unique Custom Design Fee	As quoted
Executive Cards (Travel and Corporate One Card only)	Fee Waived (maximum of 10 Cards)
Travel Rewards (Travel and Corporate One Card only)	\$75.00 Annual Fee per card
Return Payment Fee	\$29.00
International Transaction Fee	Up to 1% of USD amount
Copy Fee	\$3.00 per copy
Expedited Card Delivery Fee	<ul style="list-style-type: none"> ➤ FedEx (Default)=No Fee ➤ Overnight=\$35.00 ➤ 2-day=\$20.00

Corporate Billed Fees and Finance Charges	
Late Fee (assessed three days after cycle date when account is past due 1 – 30 days) (Assessed as a % of the past due amount for the current month's charges and any unpaid balances when the account is past due three days)	Not to exceed State of Michigan Law
Periodic Finance Charge Fee (Accrue on all balances that are 31-60 days past due)	Not to exceed State of Michigan Law
Cash Advance Fee	As of the date of execution, the State does not allow Cash Advances by its Cardholders

Individual Billed Fees and Finance Charges	
Late Fee (assessed three days after due date when account is past due 1 – 30 days) (Assessed when the account is past due three days)	\$29.00 per occurrence (no min/no max)
Periodic Finance Charge Fee (Accrue on all balances that are 31-60 days past due)	Prime Rate + 3%
Cash Advance Fee	2% of transaction amt (\$5.00 min/no max)

ePayables Fees and Finance Charges	
Late Fee (assessed three days after cycle date when account is past due 1 – 30 days) (Assessed as a % of the past due amount for the current month's charges and any unpaid balances when the account is past due 01-30 days)	Not to exceed State of Michigan Law
Periodic Finance Charge Fee (Accrue on all balances that are 31-60 days past due)	Not to exceed State of Michigan Law

If the State makes a Transaction in currency other than U.S. dollars, Visa or MasterCard will convert the charge or credit into a U.S. dollar amount. The conversion rate on the processing date may differ from the rate on the date of your Transaction.



The exchange rate used by Visa will either be (i) a rate selected by Visa from a range of rates available in wholesale currency markets for the applicable central processing date, which rate may differ from the rate Visa receives, or (ii) the government-mandated rate in effect for the central processing date. MasterCard will use an exchange rate of either (i) a wholesale market rate or (ii) a government-mandated rate. We may add a 1% fee to the U.S. dollar amount of any Transaction that is made in foreign currency or that is made outside the United States even if you pay in U.S.

dollars (the “International Transaction Fee”). The International Transaction Fee will be shown in the Activity section on your billing statement.
 The International Transaction Fee will be aggregated in the Other Fees category on the Summary section of your statement.

II. Electronic Products Schedule of Fees and Charges

Reporting and Data

Works	Fee Waived
Visa Information Management (VIM)	Fee Waived
Global Reporting and Account Manager (GRAM)	Fee Waived
Payment Center	Fee Waived
Data File Feeds To Customers / Third Parties: Statement Billing File EDI 811 Travel Agency File Visa Commercial Format (VCF) MC Commercial Data Format (CDF)	Fee Waived

Custom Requests

Custom Development and/or Maintenance	\$150.00 per hour
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Works Receipts Imaging

Pricing Schedule		
	# of Open Accts	Receipt Imaging Fee
Tier 1	1-50	\$50
Tier 2	51-100	\$100
Tier 3	101-200	\$200
Tier 4	201-350	\$350
Tier 5	351-700	\$700
Tier 6	701-1,500	\$1,500
Tier 7	1,501-3,000	\$3,000
Tier 8	3,001-5,000	\$5,000
Tier 9	5,001-10,000	\$10,000

The State will be charged monthly at the corporate account level

Note: The State must sign additional Receipt Imaging addendum if the State chooses to implement.



III. U.S. Schedule of Rebates (Cycle and Grace Days)

Rebate Definitions

Capitalized terms, which are not defined in this Section III have the meanings ascribed in the applicable Card Service Agreement.

“Calculation Period” means March 1 through the last day of February each year.

“Credit Losses” means any balances which remain unpaid by Company, Participant or a Cardholder six (6) billing periods after the closing date on the Billing Statement in which the Transactions, fees and charges appeared for the reporting period.

“Cycle Days” means the number of days from the start of the billing period to the Billing Statement date.

“Grace Days” means the number of days after the Billing Statement closing date within which payment is due.

“Large Ticket Interchange Transactions” means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

“Rebate Multiplier” means the multiplier corresponding to the Standard Transactions volume, Cycle Days and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table below.

“Standard Transactions” means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

“Total Credit Losses” means, for any Calculation Period, the sum of (i) the Contractor’s Credit Losses on the Card Accounts for the Calculation Period and (ii) the Contractor’s Credit Losses on the Card Accounts for any previous Calculation Period which have not been applied against any rebate payable under the Contract.

“Transaction Volume” means, for any Calculation Period, the total dollar amount of purchase Transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume. This will also include any purchases made under the Extended Purchasing Program members as referenced in Section 2.281.

Rebate Conditions

During the Calculation Period, the program must meet all of the following conditions in order to qualify for a rebate:

- i. The State pays the Contractor the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date; and
- ii. The State has not breached any obligation, covenant, representation, or warranty contained in this Contract; and
- iii. Calculation Period Transaction Volume meets the minimum volume requirement (\$1,000,000.00) as set out in the Standard Transactions Rebate Multiplier Table; and
- iv. The Contract has not been terminated by the State, or by the Bank for cause, prior to the completion of a rebate calculation period.

Rebate Calculation and Payment

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, the Contractor will pay a rebate to the State, which will be calculated at the end of the Calculation Period in accordance with the Standard Transactions Rebate Multiplier Table and using the following equation:



$$((\text{Transaction Volume for Standard Transactions} \times \text{Rebate Multiplier}) + (\text{Transaction Volume for Large Ticket Interchange Transactions} \times \text{LTI Rebate Multiplier}) - \text{Total Credit Losses})$$

The Standard Transactions rebate multiplier will be determined based on the Calculation Period cumulative total of all Standard Transactions volume, including Standard Transactions volume from travel rewards participants, however, Standard Transactions volume that is applied to travel rewards points will not be included in the rebate payout calculation. This paragraph is applicable for products with Travel Rewards only.

Payment of any rebate will be made by ACH credit or other means determined by the Contractor, within 90 days following the end of the Calculation Period.

Should one or more of the above Rebate Conditions not be met, the Contractor will be under no obligation to pay any rebate, although the Contractor may, in its sole discretion, determine to pay a rebate in an amount determined by the Contractor. The Contractor’s payment of a rebate in such circumstance will in no way obligate the Contractor to pay a rebate with respect to any subsequent Calculation Period.

Standard Transaction Rebate Multiplier Table*

State of Michigan Annual USD Card Volume Tiers Excludes Large Ticket		Cycle days	7	14	14	30	30	30	30	30
		Grace days	3	3	7	3	7	14	20	25
		REBATE BASIS POINTS								
\$1,000,000	\$1,999,999		114	110	106	102	98	91	85	80
\$2,000,000	\$2,999,999		134	130	126	122	118	111	105	100
\$3,000,000	\$4,999,999		149	145	141	137	133	126	120	115
\$5,000,000	\$9,999,999		181	177	173	169	165	158	152	147
\$10,000,000	\$14,999,999		183	179	175	171	167	160	154	149
\$15,000,000	\$19,999,999		185	181	177	173	169	162	156	151
\$20,000,000	\$34,999,999		187	183	179	175	171	164	158	153
\$35,000,000	\$49,999,999		189	185	181	177	173	166	160	155
\$50,000,000	\$74,999,999		191	187	183	179	175	168	162	157
\$75,000,000	\$79,999,999		193	189	185	181	177	170	164	159
\$80,000,000	\$84,999,999		195	191	187	183	179	172	166	161
\$85,000,000	\$89,999,999		196	192	188	184	180	173	167	162
\$90,000,000	\$94,999,999		197	193	189	185	181	174	168	163
\$95,000,000	\$99,999,999		198	194	190	186	182	175	169	164
\$100,000,000	\$104,999,999		199	195	191	187	183	176	170	165
\$105,000,000	\$109,999,999		200	196	192	188	184	177	171	166
\$110,000,000	\$114,999,999		201	197	193	189	185	178	172	167
\$115,000,000	\$119,999,999		202	198	194	190	186	179	173	168
\$120,000,000	\$124,999,999		203	199	195	191	187	180	174	169
\$125,000,000	\$129,999,999		204	200	196	192	188	181	175	170
\$130,000,000	\$139,999,999		205	201	197	193	189	182	176	171
\$140,000,000	\$149,999,999		206	202	198	194	190	183	177	172
\$150,000,000	\$159,999,999		207	203	199	195	191	184	178	173
\$160,000,000	\$169,999,999		208	204	200	196	192	185	179	174
\$170,000,000	\$179,999,999		209	205	201	197	193	186	180	175
\$180,000,000	\$189,999,999		210	206	202	198	194	187	181	176



\$190,000,000	\$199,999,999		211	207	203	199	195	188	182	177
\$200,000,000	\$224,999,999		212	208	204	200	196	189	183	178
\$225,000,000	\$249,999,999		213	209	205	201	197	190	184	179
\$250,000,000	\$274,999,999		214	210	206	202	198	191	185	180
\$275,000,000	\$299,999,999		215	211	207	203	199	192	186	181
\$300,000,000	+		216	212	208	204	200	193	187	182

Large Ticket Interchange Qualified Transactions Annual Volume	Cycle Days Grace Days	7	14	14	30	30	30	30	30	
		3	3	7	3	7	14	20	25	
		REBATE BASIS POINTS								
\$0	+	66	64	60	56	52	45	40	35	

Signing Bonus Incentive

The Contractor will pay the State a signing bonus incentive as set out below, within 90 days of the date of the execution of this Contract. This signing bonus is in addition to the rebates noted above. This signing bonus incentive is contingent on achievement of Year 1 Transaction Volume set out below. If the program fails to achieve the Transaction Volume target, then the State will pay back to the Contractor a proportional amount of the signing bonus incentive. For example, if the Year 1 Transaction Volume is 10% below the Year 1 target Transaction Volume, then 10% of the signing bonus incentive will be repaid to Bank at the end of the first annual Calculation Period.

Signing Bonus Incentive	Year 1 Volume Requirement	Three Year Cumulative Volume Requirement
\$210,000.00	\$42,000,000.00	\$126,000,000.00

If, after the Contractor pays the State a signing bonus incentive, the State terminates the Contract for convenience in accordance with the Contract, or the Contractor terminates the Contract for cause in accordance with the Contract within three years from the effective date of the Contract, the State agrees that it will reimburse the Contractor a pro rata portion of the signing bonus incentive in accordance with the following calculation: the State may retain one-third of the signing bonus incentive for each completed year of the Contract and will re-pay the remainder to the Contractor.

If the program fails to achieve the three year cumulative Transaction Volume requirement, then the State will pay back to the Contractor a proportional amount of the bonus incentive through a reduction of any rebate that may be due to the State, or, if rebate is insufficient, then the State will re-pay the remainder to the Contractor within 90 days of the end of the third Card Contract year. For example, if the three year cumulative Transaction Volume is 10% below the cumulative Transaction Volume requirement, then 10% of the bonus incentive, less any previous adjustments made by the State, will be repaid to the Contractor.

Payment of any incentive will be made by ACH credit or other means determined by the Contractor, within 90 days following the end of the applicable Calculation Period.

Nothing in this Schedule of Fees and Charges is intended to state a term for the Contract. For the avoidance of doubt, any period of time set forth in the Schedule of Fees and Charges applies solely to pricing terms, but only to the extent the Contract has not been terminated as set forth in the Contract.

Notwithstanding anything to the contrary in the Contract or this Schedule of Fees and Charges, all fees and charges are subject to change upon 30 days prior written notice to the State if an event external to the Contractor increases the cost or decreases the revenue to the Contractor (e.g., decreases to interchange revenue paid to the Contractor by a card association, increases to funding costs due to interest rate changes or deterioration in the State’s financial condition) in connection with providing this card program to the State.



Attachment B – Bank of America Corporate Card Service Agreement

This Bank of America Corporate Card Service Agreement (the “Agreement”) is made by and between FIA Card Service, N.A., a Bank of America company, (“Bank of America”), and State of Michigan (“Company”).

The terms “we”, “us” and “our” refer to Bank of America. The terms “you” and “your” refer to Company.

With our Corporate Card Services you are allowed to open Card Accounts for your business purposes. You may select one or more of the following card programs: purchasing card program, travel and entertainment card program, accounts payable card program or fleet card program (each a “Service”, collectively, the “Services”). You may begin using a Service once we have approved such use and we have received all required and properly executed forms and you have successfully completed any testing or training requirements. Whenever you use a Service, you agree to be bound by this Agreement, as amended from time to time, and to follow the procedures in the applicable Materials.

Definitions

Billing Statement. The official invoice provided to you, Participant and/or Cardholder which identifies each Transaction posted during the billing cycle, the date of each Transaction and the applicable fees and charges, payment amount due and Payment Due Date.

Business Day. Each day on which we are open for business related to the Services.

Card. Each plastic charge card which we issue for your Card Account using a Service.

Card Account. Each MasterCard® or Visa® account which we issue to you or to a Cardholder with respect to a Service, including a Cardless Account.

Card Administrator. One or more individuals designated by you in writing, as our primary contact for the Card Accounts, who is authorized to take actions necessary or appropriate to maintain the Card Accounts, including without limitation designating persons to receive Card Accounts, receiving communications from us related to the Card Accounts, requesting the closure of Card Accounts and otherwise communicating with us with respect to the Card Accounts.

Cardholder. Your employee or any other person who you designate in writing and who we approve to receive a Card. If you or a Cardholder makes a Card Account number available to another party, that person will also be considered a Cardholder.

Cardless Account. An Account for which we assign only an account number, but no Card is issued.

Grace Days. The number of days after the Billing Statement closing date within which payment is due.

Guarantor. A person or entity, other than you or a Participant, that agrees to assume responsibility for the obligations of this Agreement, including payment of any amounts owed.

Materials. The Software, user identification codes, passwords, codes, keys, test keys, security devices, embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation we provide to you.

Payment Due Date. The payment due date shown on the Billing Statement which date shall be the last day of the Grace Days.

Software. Web-based applications accessed via a Website and/or the programs and data files provided by us for use on a computer in connection with the Services.

Subsidiary. Any entity in which more than 50% of the ownership interest is owned, directly or indirectly, by you. The term "Subsidiary" does not include affiliates or other entities in which 50% or less of the ownership interest is owned, directly or indirectly, by you.



Transaction. The purchase or reservation of goods or services or a Cash Advance made or facilitated by use of a Card Account.

Unauthorized Use. Use of a Card Account or Card by a person (i) who is not your Cardholder, employee or agent, (ii) who does not have actual, implied or apparent authority to use the Card Account and (iii) whose use does not benefit you directly or indirectly.

User Documentation. Any written information we provide you, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service. Current User Documentation is available upon your request.

Website. Any internet website and/or online access channel for use in accessing the Services.

Our Obligations

We will open Card Accounts upon your request which Cardholders may use to conduct Transactions for your business. All Transactions made on a Card Account are considered authorized by you unless we receive and have had a reasonable period of time to act upon notice that is system generated or received through telephone contact, from you that the Cardholder is no longer authorized to use the Card, or the Card Account.

At your request, we may also establish a Cardless Account. We may deny authorization of any Transaction if we suspect fraudulent activity or Unauthorized Use or for any other reason. We will not be liable for any failure to authorize a Transaction.

We are responsible only for performing the Services expressly provided for in this Agreement. We may contract with an outside vendor, with the approval of the State of Michigan, in performing the Services.

Your Obligations

You shall use each Card Account solely for your business purposes.

You shall pay for each Transaction, regardless of its purpose or whether you signed a sales draft or received a receipt. In addition, you shall pay our fees and charges as set forth in the schedule of charges currently in effect for you.

You represent and warrant to us that each Cardholder is a current employee or agent of your company. You and each Cardholder will check to ensure that the information embossed on each new Card is correct, and you will contact us immediately if there is an error.

You must give us prompt written notice of any addition, change or elimination of a Card Administrator.

Charge Limits

For each Service, we will give you one total charge limit for all your Card Accounts. We will also assign an individual charge limit for each Card Account. Upon your request and if approved by us, we may increase the total charge limit or any individual limit. We may decrease the total charge limit or any individual limit at our discretion. You agree not to incur obligations which would cause the total charge limit for all your Card Accounts to be exceeded. If you do exceed the total charge limit, we may deem the amount that exceeds the total charge limit to be immediately due and payable, and/or refuse any Transactions on all Card Accounts until a payment is made to reduce the balance below the total charge limit. If any Cardholder's individual charge limit is exceeded, we may refuse any Transactions on the individual Card Account until a payment is made to reduce the balance below the individual charge limit.

Transactions in Other Currencies

If you make a Transaction in currency other than U.S. dollars, Visa or MasterCard will convert the charge or credit into a U.S. dollar amount. The conversion rate on the processing date may differ from the rate on the date of your Transaction. The exchange rate used by Visa will either be (i) a rate selected by Visa from a range of rates available in wholesale currency markets for the applicable central processing date, which rate may differ from the rate Visa receives, or (ii) the government-mandated rate in effect for the central processing date. MasterCard will use an exchange rate of either (i) a wholesale market rate or (ii) a government-mandated rate. We may add a fee to the U.S. dollar amount of any Transaction that is made in a foreign currency (the "International Transaction Fee"). The International Transaction Fee is set forth in the



schedule of charges currently in effect for you. The International Transaction Fee will be shown in the Activity section on your Billing Statement and aggregated in the Other Fees category on the Summary section of your statement.

Disputes with Merchants and Suppliers

We will have no liability for goods or services purchased with, or for a merchant's or supplier's failure to honor purchases made with, a Card Account, or Card. You agree to make a good faith effort to resolve any dispute with a merchant or a supplier arising from a Transaction. In a dispute with a merchant or supplier, we will be subrogated to your rights and each Cardholder's rights against the merchant or supplier and you will assign (and cause the Cardholder to assign) to us the right to assert a billing error against the merchant or supplier. You will, and will cause the Cardholder to, do whatever is necessary to enable us to exercise those rights. We may reverse from any Card Account any Transactions relating to the dispute.

A merchant or supplier may seek prior authorization from us before completing a Transaction. If you advise us in writing that you desire to restrict Transactions to merchants falling within certain categories we designate in our User Documentation, we will take reasonable steps to prevent authorization of Transactions from other types of merchants. We, however, will not be liable to you if merchants or suppliers nonetheless accept a Card or Card Account for other types of Transactions, or if authorization for a Transaction is not given.

Convenience Checks – Reserved

Cardless Accounts; Accounts Not in Name of Individual

We may, at your request, establish a Cardless Account or establish a Card Account with a designation which is not an actual individual, including, without limitation, designation of a vehicle identification number, license number, department name or "Authorized Representative" on the Card Account. You agree to be solely responsible for the use of any such Cardless Account or Card Account, including, without limitation, any Unauthorized Use, and you agree not to make any claim or request related to any Unauthorized Use of such a Cardless Account or Card Account.

Payment of Card Accounts; Security Interest

We will provide to the Card Administrator, or other person you designate in writing to us, a Billing Statement which will identify each Transaction posted during the billing cycle and the date of the Transaction. The Billing Statement will also list any applicable fees and charges for a Service. If you have requested a Card Account for travel and entertainment Transactions, we will provide, upon your request, an additional copy of the Billing Statement covering such use of the relevant Card Account to the appropriate Cardholder at the address which you or the Cardholder provides to us.

You will pay to us the total undisputed amount due on each Billing Statement on or before the due date shown on the statement. If you do not make a payment in full by the specified due date, in addition to our other rights, we may assess a late fee and finance charge as set forth in the schedule of charges currently in effect for you. You have no right to defer any payment due on any Card Account.

You will pay us for a Service according to the schedule of charges currently in effect for you, except as we agree otherwise (in writing) from time to time. However, we may adjust, upon 30 days prior written notice, the schedule of charges based on a change in the law, regulations, or card association rules.

You will pay us for any customized Software application and/or support in excess of that contemplated in the Software section of this Agreement. The charges for such extra support will be as specified by us before such charges are incurred or as otherwise agreed by you and us from time to time.

Payments will be made by wire transfer.

Lost or Stolen Cards; Unauthorized Use

In the event of a possible loss or theft of a Card, or Card Account or possible Unauthorized Use, you will give us notice by telephone to the numbers set forth in the User Documentation. You agree to give us this notice as soon as practicable but in any event no later than the Business Day after discovery of the known or suspected loss or theft or Unauthorized Use. If notice as provided in this paragraph is given and you assist us in investigating facts and circumstances relating to the loss, theft or possible Unauthorized Use, including



without limitation obtaining an affidavit or similar written, signed statement from the Cardholder, then you will not be liable for Transactions resulting from Unauthorized Use. If we have issued fewer than ten Card Accounts to you, your liability for Transactions by a person who does not have actual, implied or apparent authority to use the Card, or Card Account and whose use does not result in a direct or indirect benefit to you will not exceed \$50.00 on each Card.

License to Use Your Marks

Upon your request, we may place your trademark, tradename, service mark and/or designs (“Company’s Marks”) on the Cards and collateral materials. You will provide the graphics to us in sufficient time to allow for review and approval by us and, if necessary, the respective card association. You grant to us a non-exclusive license to use, during the term of the Service, Company’s Marks on the Cards and on other materials related to the Card Accounts. If, as you request, we place your Company Marks on the cards or collateral materials, you agree to be responsible for any claim that alleges the use of any Company Marks infringes the intellectual property right of any third party.

Extension of Corporate Card Service to Affiliates – Reserved

Governing Law

This Contract is governed by the laws respecting national banking association and, to the extent not covered by the laws of the State of Michigan and any superseding federal laws. Any dispute arising from this Contract must be resolved in the State of Michigan. The Contractor consents to venue in Ingham County, and waives any objections it may have such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

Termination – Reserved

Software License

These License terms (“License”) govern the provision and use of our proprietary applications, any third party sites or applications and any related services used to provide the Services in whole or in part (collectively, the “Applications”). Your use of the Applications and any related services means you have read, and acknowledge and agree to the terms and conditions herein.

The License granted hereunder constitutes a nontransferable, nonexclusive, revocable, limited License to access and use the Applications and any related services in accordance with the terms and conditions set forth in this License, in a manner intended for authorized use, and to the extent authorized by us.

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We will make the Applications available over either the internet or through an intranet site to allow you to electronically and remotely access the Applications. You will provide at your own expense, all necessary telephone lines, internet connections, equipment, software (including a compatible web browser), and services for you to effectively access the Applications. Your access to the Applications will be controlled by a user name and password, as well as the authorization approved by your program administrator.

Changes to s Service

You may request us at any time to change the processing instructions for a Service. We are not obligated to implement any requested changes until we have had a reasonable opportunity to act upon them. In making changes, we are entitled to rely on requests purporting to be from you. For certain changes, we may require that your requests be in writing, in a form and manner acceptable to us, or be from an authorized person you designate. In addition, certain requests for changes may be subject to our approval.

We may change, add or delete any of the terms, conditions and/or pricing applicable to a Service due to changes in the law or regulations, card association rules, or our operations that affect the entire commercial card busins upon 30 days prior notice to you in writing or by electronic means. Your continued use of or failure to terminate the Service, after the effective date of the change, will indicate your agreement to the change.

Communications; Notices

You agree that we may electronically monitor and/or record any telephone communications with you in those countries which permit that practice. If our records about any such communication are different from yours, our records will govern.

If you choose to use unencrypted electronic mail to initiate requests or other instructions or otherwise communicate with us, your use of such electronic mail with respect to a Service will be subject to the terms and conditions of this Agreement and will comply with the applicable User Documentation. In addition, you agree to bear the risk that such electronic mail may be corrupted, modified, garbled or hacked or its confidentiality may be breached by a third party and the risk that we will rely on such mail, which appears to be from you but which is unauthorized, and that such reliance will result in a loss.

Confidentiality – Reserved

Limitation of Liability – Reserved

Protection from Third Parties – Reserved

Resolution of Disputes – Reserved

**Severability**

If any provision of the Agreement or the application of any such provision to any person or set of circumstances is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of the Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

Waiver

No delay or failure to exercise any right or remedy under the Agreement shall be deemed a waiver of such right or remedy. No waiver of a single breach or default under the Agreement shall be a waiver of any other breach or default. Any waiver under the Agreement must be in writing.

Your Representations and Warranties

You represent and warrant to us on and as of each day on which we provide a Service to you that (i) the Agreement constitutes your duly authorized, legal, valid, binding and enforceable obligation; (ii) your performance of your obligations will not violate any law, regulation, judgment, decree or order applicable to you or facilitate illegal transactions, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq.; (iii) the debiting of any account as provided in the Agreement is not inconsistent with any restriction on the use of that account; (iv) all approvals and authorizations required to permit the execution, delivery, performance and consummation by you of the Agreement and the transactions contemplated under the Agreement have been obtained, including but not limited to due authorization from each applicable third party to allow you to transfer funds and access information from such party's account; and (v) there is no lawsuit, tax claim or other dispute pending or threatened against you which, if lost, would impair your financial condition or ability to pay us under the terms of this Agreement.

Agreement

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Agreement is not for the benefit of any other person, and no other person shall have any right under the Agreement against you or us. Nothing contained in the Agreement shall create any agency, fiduciary, joint venture, or partnership relationship between you and us.