Form No. DTMB-3522 (Rev. 4/2012)
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

CONTRACT NO. 071B4300024

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Compass Commercial, LLC	Lynn Drake	ld@compass-commercial.com
100 W. Big Beaver, Suite 110	TELEPHONE	CONTRACTOR #, MAIL CODE
Troy, MI 48084	(248) 817-5400	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Robert Burns	(517) 335-6877	DTMB-realestate@Michigan.gov
BUYER:	DTMB	Angela Buren	(517) 373-0325	burena@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION:

Brokerage Services

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	11/1/2013	10/31/2016	Three Two-Year
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
Net 45	Shipment	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☒ YES ☐ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$1.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #C20130613-151951. Projects will be assigned to the Contractor through the signed acknowledgement of a Project Assignment and Broker Conflict of Interest form, issued directly by the Department of Technology, Management & Budget, Real Estate Division.

FOR THE CONTRACTOR:	FOR THE STATE:
Compass Commercial, LLC	
Firm Name	Signature
	Kevin Dunn, Services Division Director
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

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Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The Contractor will provide a multitude of Brokerage Services for the Department of Technology, Management & Budget (DTMB), Real Estate Division (RED), on an as-needed basis for commercial leasing portfolio procurement operations. The Contractor will act as a Tenant Representative in the brokerage transactions for the region(s) they are awarded (See Section 1.021 of the Contract for a list of regions). The Brokerage Services Contracts are nonexclusive and the State maintains the ability to purchase these services from other Contractors or with the use of State staff.

When a State of Michigan executive branch agency needs a commercial real estate service, they will submit a request to the Real Estate Division.

All broker-assigned projects will be assigned to a State of Michigan Property Specialist that will provide project management oversight and will be the main point of contact for the assigned services.

1.012 Background

Under PA 431 of 1984, DTMB RED is the organizational unit responsible for all commercial leasing needs. The duties and responsibilities of RED continue to grow as it strives to be an effective and efficient steward of the tax dollar.

Executive Order 2002-20 consolidated most real estate lease and surplus property functions into the DTMB - RED. To supplement the shrinking number of real estate professionals employed by the State, DTMB signed its first state-wide exclusive contract for real estate brokerage services in 2004. When the first contract was initiated, the state had over 660 state-as-lessee leases. That portfolio has decreased substantially to less than 495 leases at the time of issuance of this Contract.

In an effort to ensure the State of Michigan continues to apply best practices of the leasing industry, and to ensure increased exposure to local markets for available commercial properties, the partnership model is being augmented to reflect the need for multiple brokers in diverse regions to assure the best value for the State.

The new contract(s) will allow RED to leverage regional expertise available from various local partners in obtaining new cost-saving leasing opportunities.

1.020 Scope of Work and Deliverables

The State has awarded multiple contracts for brokerage services within each region.

There will be no assurance the State will assign projects to a Contractor.

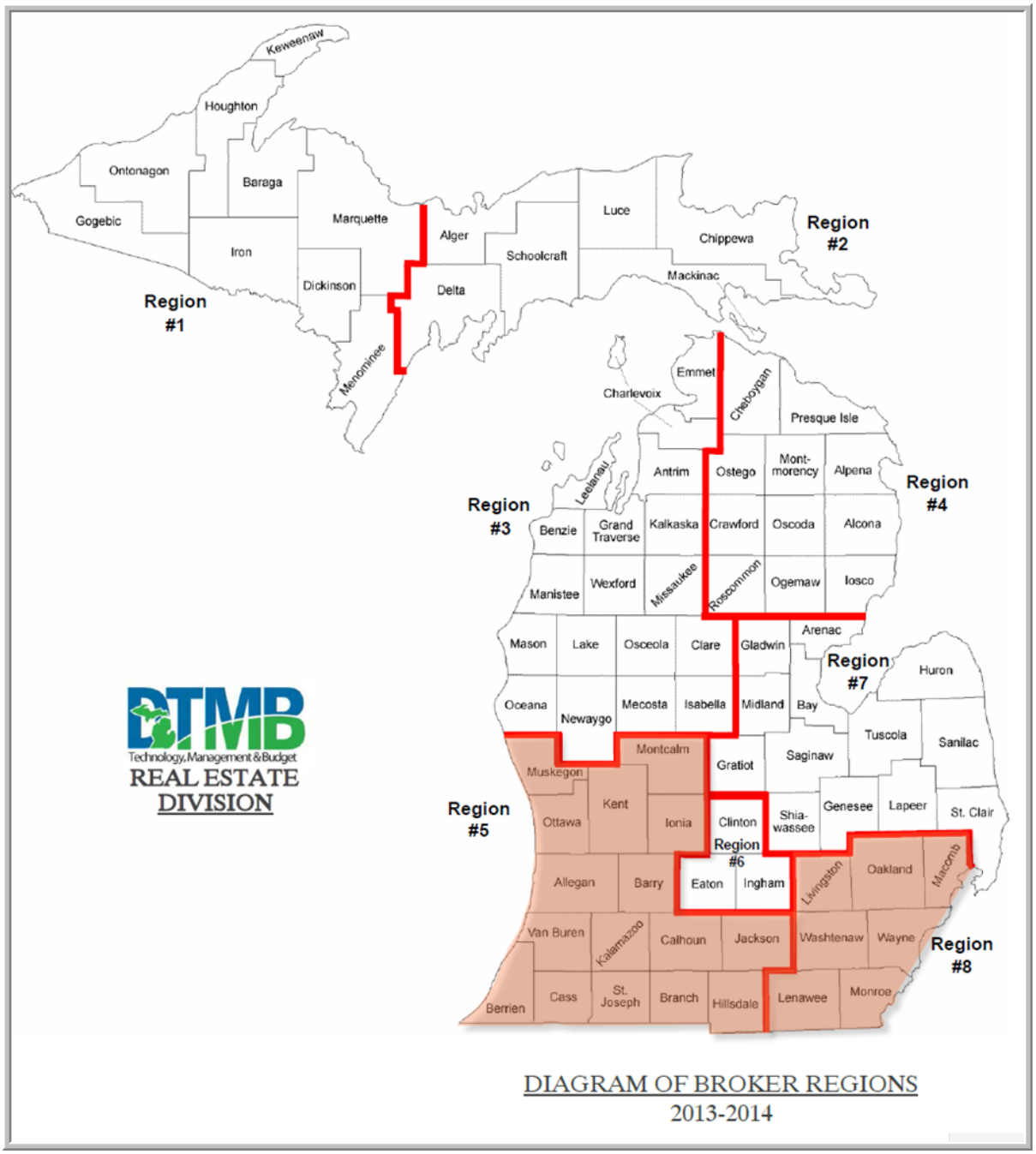
The Brokerage Services contracts are broken into 8 specific regions and assignments will be based on availability of contracted brokers within 8 county regions listed in the table. The regions this Contract includes are identified in Column 3 of the following table:

Region Title	Region Includes	Does This Contract Include This Region?
Region 1 (Western UP):	Gogebic, Ontonagon, Houghton, Baraga, Iron, Marquette, Dickinson and Menominee.	NO
Region 2 (Eastern UP):	Alger, Delta, Schoolcraft, Luce, Chippewa and Mackinac.	NO
Region 3 (Northwestern LP):	Emmet, Charlevoix, Antrim, Leelanau, Benzie, Grand Traverse, Kalkaska, Manistee, Wexford, Missaukee, Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta and Isabella.	NO
Region 4 (Northeastern LP):	Cheboygan, Presque Isle, Ostego, Montmorency, Alpena, Crawford, Oscoda, Alcona, Roscommon, Ogemaw and Iosco.	NO
Region 5 (Western LP):	**Muskegon, Montcalm, Ottawa, Kent, Ionia, Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Jackson, Berrien, Cass, St. Joseph, Branch and Hillsdale.**	**YES**
Region 6 (Mid-Michigan):	Clinton, Eaton and Ingham.	NO
Region 7 (Eastern LP):	Gladwin, Arenac, Midland, Bay, Huron, Gratiot, Saginaw, Tuscola, Sanilac, Shiawassee, Genesee, Lapeer and St. Clair.	NO
Region 8 (Southeastern LP):	**Livingston, Oakland, Macomb, Washtenaw, Wayne, Lenawee and Monroe**	**YES**

Based on Agency-specific requirements and location flexibility, there may be instances where the State requires the Contractor to expand their property search to more than one region. The State reserves the right to request this type of expanded search, and will seek a Contractor with a presence in the regions under consideration. This type of request is most likely to occur when the desired location is at or near the intersection of multiple regions.

The State reserves the right to add additional regions to this Contract through the Contract Change Control process outlined in Section 2.024 of the Contract.

Please see the “Diagram of Broker Regions” on the next page for the Broker Region Map.



Contractor Activities:
The Contractor will be responsible for the following activities on each project they are assigned:

a) signing project agreement and disclosure forms,
b) canvassing within established boundaries that meet specific agency requirements,
c) drafting the request for proposal (bids),
d) communicating correspondence documenting project status,
e) providing market and financial analysis,
f) drafting bid recommendations,
g) drafting notices of conditional success or non-success on bids,
h) obtaining all required legal documentation from the successful bidder,
i) drafting a red-lined version of lease using State of Michigan lease template in Microsoft Office.
j) All other specific deliverables and tasks identified in 1.022.

Mandatory Requirements:
The following are key mandatory requirements for State of Michigan Leases and must be provided by the Contractor.

1. Sample Lease Generic Form:
All leases entered into by the State of Michigan are based on the Standard Lease form pre-approved by the Attorney General's office. The Attorney General's office must approve any lessor-proposed revisions. The State of Michigan reserves the right to make further modifications to the Lease document. (**See Attachment B**).

2. Lease Cancellation Types:
All State leases for real property are required to contain a cancellation provision as established within the framework of the Michigan Constitution. The State reserves the right to upgrade the type of cancellation language used in a new Lease if conditions (including but not limited to the amortization of construction costs) are deemed appropriate. (**See Attachment C** - Lease Cancellation Types for typical examples).

3. Legal Documentation:
All leases must be approved by the Attorney General's office, including the submission of documentation necessary as evidence of legal authority of the Lessor to enter into the lease agreement, including the signatory's authority to bind. A legible photocopy of the recorded warranty deed or other instrument conveying current legal possession or title to the landlord must be submitted.

4. Adjustments/Escalations:
There will be no adjustments made to the rental amount due to the landlord for CPI increases, operating costs, or real property taxes, without RED Director approval.

A project will not be considered completed until the lease has been executed to the Lessor by the Director of Real Estate.

5. Project Assignment and Broker Conflict of Interest Form
This form must be completed prior to the commencement of any broker activities. This document will clarify expectations and time-limit for completion, along with providing an assurance the Broker does not have a conflict of interest on the specific project assignment. The State of Michigan reserves the right to make further modifications to the project assignment form. (**See Attachment D**)

Notice: If evidence that a disclosure was falsely issued and a conflict is apparent, the individual Broker contract will immediately be cancelled and evidence forwarded to the Michigan Department of the Attorney General.

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:

Contracts have been awarded to multiple service providers in each region. To initiate a project, a request will be generated by the RED. One of the region providers (Contractor(s)) will be contacted for the project and if a conflict of interest exists, RED will go to another Broker who has a Contract that includes the specific service in the desired region. The Broker will carry out the project under the direction of the RED Property Specialist and/or other designee assigned by the RED Director.

Projects will not be assigned to the Broker for lease renewals, Local Units of Government locations and Construction Change Orders.

Lease Process Procedures and Approval Steps / Deliverables
The Contractor will be required to follow State of Michigan (State) procedures and draft the following documents by utilizing State-provided templates and/or generic samples. A summary of the current and future anticipated lease process procedures and approval sequential steps are provided below:

1. Follow guidelines and directions of the State of Michigan Property Specialist for Agency space needs.
2. Follow Request for Proposal (RFP) process and submit and upload the RFP to the State of Michigan RFP website. **See Attachment E** - New Lease Process Checklist.
3. Complete Proposals Received Memo & distribute to Agency. Copy memo to RED Manager & RED Property Specialist.
4. Schedule and complete site visits with Agency and DTMB RED Specialist and DTMB Design and Construction Division (DCD).
5. Provide site visit comments and/or disqualification justification based on functional requirements.
6. Send Best and Final Offer (BAFO) to qualified Proposers.
7. Receive BAFO and draft financial recommendation and complete market/financial analysis (a minimum of 3 market comparisons if available for that region, along with comparison to State of Michigan pre-existing leases within that market).
8. Send Recommendation to RED Manager & RED Property Specialist to review final decision before issuing the recommendation, and disclose final negotiated commission for each rank ordered recommendation.
9. Provide RED Director/Leasing Manager a copy of the final commission agreement for all qualified proposers.
10. Prepare and send conditional successful/non-successful bidder notices, allowing 10 business days for submission of missing legal documents.
11. Review any additional documents received using the Signature & Legal Documentation Requirements list. Provide the Signature and Legal Documentation for the document being executed. **See Attachment F** - Signature and Legal Documentation Requirements.
12. Schedule and hold Pre-Lease meeting to review lease language with RED Property Specialist, Agency, Lessor and DCD.
    See Attachment B - Sample Lease Generic.
13. Finalize Lease document, complete with all enclosures.
14. Send Lease document to Property Specialist for review and approval.
15. Send Lease document to Agency for review and approval.
16. Send Lease with cover communication and all enclosures to Lessor.
17. Prepare final lease package for the RED Property Specialist for their internal write-up submission for review by the Department of Attorney General. This submission should include a hard copy of the lease draft, along with all signature authority and legal documentation for the lessor. In addition, an electronic copy of the draft lease will be sent to the project manager utilizing track changes.
18. Peer review of Lease Package in accordance with Checklist-Lease Peer Review.
    See Attachment G - Sample Lease Peer Review.
19. Provide Bi-weekly progress reports of ongoing projects using Microsoft Word and/or Excel and provide via e-mail to DTMB-Realestate@michigan.gov

All Brokers providing services as a result of this Contract will be evaluated by the RED and client agency personnel at the conclusion of the project, to determine the level of performance. At the State's discretion, Contractors who receive a negative evaluation by the State may be removed from consideration for future project opportunities.

In the event a Lease has not been awarded by the expiration date on the project assignment and Broker Conflict of Interest form, the State may, at its sole discretion, choose to renew the project assignment, or assign the project to another Broker. A project assignment may be terminated at any time by the State.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Each Key Personnel assigned shall meet the following requirements:

1. Brokerage License with the State of Michigan
2. Be in good standing with the State of Michigan, Licensing and Regulation Agency

- The Contractor has identified the following Key Personnel for the various regions awarded:
  - Lynn Drake (Regions 5,8)
  - Marilyn Nix (Regions 5,8)
  - Chris Atwater (Region 5)

1.040 Project Plan

1.041 Project Plan Management

The Contractor shall have the project management tools necessary to enhance the State of Michigan's process with industry best practices for managing brokerage projects.

1.042 Reports

The Contractor shall provide biweekly progress reports of ongoing projects via email to DTMB-Realestate@michigan.gov and be available as needed for customer meetings via telephone.

Reports shall be comprised of the following minimum components:

1. Date Individual Project Received
2. Lease Number
3. Project Number
4. Project Location
5. Client Agency
6. Rentable Square Foot
7. Square Foot Rate
8. Use (Warehouse, Office, Retail, etc.)
9. Lease Term and Dates
10. Current project status defining Broker activities
11. Summary of canvassing activities
12. Unresolved issues (both internal and external parties)
13. Issues that will result in project delays
14. Requested Assistance of the RED Project Manager (as needed)

The Contractor will work with RED to finalize the appropriate format that will be compatible with State of Michigan current practices. RED reserves the right to request additions and deletions as related to status requirements within the report.

1.050 Acceptance

1.051 Criteria

The RED Director or designee(s) will accept or reject each deliverable identified in Section 1.022 - Work and Deliverables as they are sequentially processed by the broker per section 1.022 of the Contract.

1.060 Proposal Pricing

1.061 Proposal Pricing

Mandatory Pricing Requirements

This Contract has a set commission rate, **not to exceed 5%.**

All brokers performing services will permit their commission rate to be negotiated with the Lessor, but will not exceed five percent (5%) and can ONLY be applied to the first five years of any lease's Base Rent.

Base Rent is defined as the net rate of the lease and excludes adjustments, utilities, amortized tenant improvements, and any charge that is not rolled into the long term flat annual rate of the lease.

The Brokers portion of the project will be considered complete once a lease is executed by the Lessor and approved by the Michigan Office of the Attorney General. Lessors are not obligated to pay a commission until rent is authorized by the State.

Additional Commission Rate Provisions:

A. Final negotiated compensation to Broker shall be disclosed to the State prior to Lease award.

B. Broker is authorized to divide compensation with other brokers in any manner acceptable to Broker and Lessor.

C. In the event that the State elects not to lease Property during the term hereof or otherwise cancels this agreement, the State is under no obligation to pay a Broker fee or any other compensation.

Optional Services
In addition to the main services described in the above sections, DTMB may choose to obtain additional services through this agreement which include but are not limited to those identified in this section under the header "Optional Services".

Description	Cost to State
A. Provide reliable market rate data that may be used to help price state-owned leases, easements, surplus property and/or proposed property acquisitions. (including office, warehouse, lab spaces as well as vacant land and active farm land).	For market rate data the Contractor can provide a $1,000/search only if they are not getting the listing. Otherwise this service would be free.
B. 1) Conduct professional property appraisals, Broker Price Opinions and title searches on state-owned property or property the State is considering for acquisition or sale. This may include direct involvement in developing the appraisal objectives (aka: the "appraisal problem") itself. 2) Alternatively, providing assistance in developing RFP and contract templates by which the State could most advantageously engage the services of independent fee appraisers and title searches.	The Contractor can subcontract this out if requested by the State at pricing that would be determined at a later date.
C. Advertise available space in state-owned facilities or surplus state-owned property on commercial property listing services (including private sector web-sites) that are otherwise unavailable to the State.	For any listing the Contractor is given, they will list the properties on loopnet,cpix, costar. In addition, the Contractor can post any listings on social media sites as well.
D. Ability to support out-of-state brokerage activities.	Payment for out of state work will be the same as in state work.

1.062 Price Term
Prices quoted are firm for the entire length of the Contract.

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term
The Contract is for a period of **3 years** beginning **11/1/2013** through **10/31/2016**. Any project agreement assigned at the expiration of the contract will not automatically expire, and cancellation of these individual projects will be at the discretion of the RED Director.

2.002 Options to Renew
The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 3 additional 2 year periods.

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

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

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

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

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

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

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

2.008 RESERVED - Form, Function & Utility

2.009 Reformation and Severability
Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

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

2.011 No Waiver of Default
If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

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

2.020 Contract Administration

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

Angela Buren, Procurement
Department of Technology, Management & Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: burena@michigan.gov
Phone: (517) 373-0325

2.022 Contract Compliance Inspector
After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer, in consultation with DTMB RED, 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:

Robert M. Burns, Real Estate Division Director
Department of Technology, Management & Budget
530 W. Allegan Street
Lansing, MI 48933
DTMB-realestate@Michigan.gov
Phone: (517) 335-6877
Fax: (517) 373-9299

2.023 Project Manager Assignments
On behalf of the Real Estate Director, the following Manager will assign a Property Specialist and Broker (as needed) to each specific project:

William Doxie, Real Estate Division Leasing Manager
Department of Technology, Management & Budget
530 W. Allegan Street
Lansing, MI 48933
DTMB-Realestate@Michigan.gov
Phone: (517) 335-6877
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2.024 Change Requests
The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

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

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a “Contract Change Notice”).

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices
Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor’s contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

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

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

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

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

(b) 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 (1) 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 RESERVED - Administrative Fee And Reporting

2.032 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.

2.033 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.

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

2.035 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.

2.036 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

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

2.038 RESERVED - Disaster Recovery

2.040 Financial Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

2.050 Taxes

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

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

2.060 Contract Management

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

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) 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, 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 Contractor Personnel Location

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

2.065 Contractor Identification

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

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

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

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

2.070 Subcontracting by Contractor

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

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

2.073 Subcontractor Bound to Contract
In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as

otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

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

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

2.080 State Responsibilities

2.081 RESERVED - Equipment

2.082 RESERVED - Facilities

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.

2.092 Security Breach Notification
If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Standard
(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

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

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

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

2.104 No Implied Rights

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

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

2.110 Records and Inspections

2.111 Inspection of Work Performed
The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records
(a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records 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.

2.113 Examination of Records
(a) The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this 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 shall 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 3 years after the later of the expiration date or final payment under the Contract.

2.114 Audit Resolution
If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

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

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

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

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

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 RESERVED - Equipment Warranty

2.126 RESERVED - Equipment to be New

2.127 RESERVED - Prohibited Products

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

2.130 Insurance

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 (3) years following the termination of this Contract.
(h) The Contractor must provide, within five (5) business days, written notice to the Director 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) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
(l) 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.
(m) 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 General Aggregate Limit other than Products/Completed Operations;
$2,000,000 Products/Completed Operations Aggregate Limit;

$1,000,000 Personal & Advertising Injury Limit; and
$1,000,000 Each Occurrence Limit.

Deductible maximum:
$50,000 Each Occurrence

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:
$10,000,000.00 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.

☑ **(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.

☐ **(iv) Hired and Non-Owned Motor Vehicle**

Minimal Limits:
$1,000,000 Per Accident

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 vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(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. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(vi) Employers Liability**

Minimal Limits:

$100,000 Each Incident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

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 certificate.

☐ **(vii) Employee Fidelity (Crime)**

Minimal Limits:
$1,000,000 Employee Theft Per Loss

Deductible Maximum:
$50,000 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:
$1,000,000 Each Occurrence
$1,000,000 Annual Aggregate

Deductible Maximum:
$50,000 Per Loss

☐ **(ix) Medical Malpractice**

Minimal Limits:
(Small Provider)$200,000 Each Occurrence
$600,000 Annual Aggregate

(Large Provider)$1,000,000 Each Occurrence
$3,000,000 Annual Aggregate

Deductible Maximum:
$5,000 Each Occurrence

☐ **(x) Cyber Liability**

Minimal Limits:
$1,000,000 Each Occurrence
$1,000,000 Annual Aggregate

Additional Requirements:
Insurance should cover (a)unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

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

☐ **(xi) Property Insurance**

Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.13.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.133 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DTMB-Procurement(or agency if agency issued RFP) with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.13.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

2.140 Indemnification

2.141 General Indemnification

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

2.142 RESERVED - Code Indemnification

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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

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

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

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

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

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

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and

expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to

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

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

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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

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

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the

termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

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

2.160 Termination by Contractor

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

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

2.170 Transition Responsibilities

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

2.172 Contractor Personnel Transition
The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must 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 State Transition Responsibilities
In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
(a) Reconciling all accounts between the State and the Contractor;
(b) Completing any pending post-project reviews.

2.180 Stop Work

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

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

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

2.190 Dispute Resolution

2.191 In General
Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must

submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

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

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

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

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

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each

Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

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

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

2.204 RESERVED - Prevailing Wage

2.210 Governing Law

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

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

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

2.220 Limitation of Liability

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation
(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any

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

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

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

(2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 RESERVED - Call Center Disclosure

2.233 Bankruptcy

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

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

2.240 Performance

2.241 Time of Performance

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

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

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

2.242 RESERVED - Service Level Agreements (SLAs)

2.243 RESERVED - Liquidated Damages

2.244 Excusable Failure

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

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

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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor

cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 RESERVED - Delivery Responsibilities

2.252 RESERVED - Delivery of Deliverables

2.253 RESERVED - Testing

2.254 Approval of Deliverables, In General

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

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

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

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

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

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

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 RESERVED - Process for Approval of Physical Deliverables

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.

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/dmb/0,4568,7-150-56355-108233--,00.html.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. 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.

2.274 Electronic Receipt Processing Standard

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

2.280 Extended Purchasing Program

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 mutual written agreement between the State of Michigan and the

Contractor, this Contract may be extended to (a) State of Michigan employees, or (b) other states (including governmental subdivisions and authorized entities).

If extended, the Contractor must supply all goods and services at the established Agreement prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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

2.290 RESERVED - Environmental Provision

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.

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.

Base Rate means the net rate of the lease and excludes adjustments, utilities, amortized tenant improvements, and any charge that is not rolled into the long term flat annual rate of the lease.

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 EDT through 5:00pm EDT unless otherwise stated.

Blanket Purchase Order or "BPO" 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.

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

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

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

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

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.

RESERVED means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

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.

Attachment A, RESERVED

Attachment B, Sample Lease Generic

Double click below to open Embedded PDF File

Attachment B – Sample Lease Generic

Attachment C, Lease Cancellation Types

STANDARD- Can be cancelled at any time by the State given the appropriate days' notice. (90 days preferable, no more than 120 without prior approval)

This Lease may be cancelled by the Lessee during any period of possession if:

a) The Lessor is notified in writing at least _____days prior to the effective date of cancellation.

EXECUTIVE NEW-Requires an Executive Order or a decision by the Director of Department of Technology, Management & Budget (DTMB) in conjunction with the head of the principal State department or agency leasing the space or space is provided in a State owned or managed building.

This Lease may be cancelled by the Lessee during any period of possession if;

a) An Executive determination has been made either that the purpose for which the Lease was entered into no longer exists, or that sufficient funds do not exist for meeting the rental obligations of the occupying State agency or department, or

b) Space is provided in State government owned or managed facilities.

LEGISLATIVE RESTRICTIVE- Requires Legislative Action.

This Lease may be canceled by the Lessee during any period of Possession if:

a) The Lessor is notified in writing at least 90 days prior to the effective date of cancellation and:

b) There is a specific prohibition arising out of the appropriation process against using funds appropriated for the Department of _____, or its assigns, for the purpose of paying rent under this Lease.

Attachment D, Project Assignment and Broker Conflict of Interest

Issued by Authority of Public Act 431 of 1984
State of Michigan

Department of Technology, Management and Budget
Real Estate Division – Mason Bldg 1st Floor
Lansing MI 48909
dtmb-realestate@michigan.gov

Project # _____.

State of Michigan, Department of Technology, Management & Budget, Real Estate Division
on behalf of the Department of _____
for the following program area/Tenant: _____. (Tenant)

PROJECT ASSIGNMENT FOR COMMERCIAL PROPERTY

This Project Assignment is entered into pursuant to Sec. # xxxx of Blanket Purchase Order (Contract) # _____ signed on xx/xx/xxxx. The Project Assignment does not modify or supersede any portion of that Contract.

This Agreement made and entered into effective as of the _____ day of _____, _____ (Effective Date) by and between _____ (Broker) and the State of Michigan, Department of Technology, Management & Budget, Real Estate Division (the State).

1. **TERM**: This Project Assignment shall commence on the Effective Date and shall remain in full force and effect until _____ (month/date/year) (Expiration Date). In the event a Lease has not been awarded by the Expiration Date, the State may, at its sole discretion, choose to renew this Project Assignment, or assign the project to another Broker. **For purposes of this agreement, a project is considered complete once a lease is executed by the Lessor and approved by the Michigan Office of the Attorney General. Lessors are not obligated to pay a commission until rent is authorized by the State.** This Project Assignment may be terminated at any time by the State.

2. **EXCLUSIVE REPRESENTATION:** The State hereby appoints Broker as the State's exclusive real estate agent during the term of this Project Assignment for the purpose of assisting the State in the location, negotiation, and award of a transaction per the terms of Contract # _____ within the scope described in paragraph 3 below. The State agrees to refer to Broker all inquiries received in any form from prospective sellers/landlords and sellers'/landlords' representatives, real estate licensees or any other source, and to conduct related negotiations through Broker during the term this Project Assignment.

3. **SCOPE**: This Project Assignment covers any lease transaction with respect to any commercial real estate (Property), irrespective of a source of the transaction, including Property which is located or identified by the State.

This Project Assignment seeks an approximately _____ square foot _____ Property for the Department of _____, for the following program area/Tenant: - _____. The search area is within the geographic area described as:
_____
_____
_____
_____
_____
_____
_____

Exceptions:
_____
_____
_____
_____

The geographic area, size and other criteria is subject to change at the sole discretion of the State at in time during the term of this Project Assignment. Additional criteria for this Property is attached as needed.

4. **CONFIDENTIALITY**: Broker acknowledges that the State may disclose confidential information to Broker in connection with performance of services under this Project Assignment, and Broker agrees to preserve such information in confidence and not to disclose any such information to the detriment of State in connection with any transaction described herein. FOIA Similarly, State acknowledges that Broker may have received confidential information in the past from a party on the opposite side of a proposed transaction with State, and State agrees that Broker's faithful maintenance of such information in confidence will not be a breach of any duty to State.

Broker Initial State Initial

5. **SCOPE OF SERVICES**: Broker's services may include, but are not limited to the scope of services as listed in contract # _____.

6. **PROFESSIONAL ADVICE**: Broker hereby advises the State to consult competent professionals with respect to the following matters: legal, accounting, tax, inspection services of Property components and systems, environmental, marketability of title, and survey, and Client agrees not to seek or rely on advice from Broker or Broker's agents regarding such matters.

7. **AUTHORITY OF THE PARTIES**: Broker does not have authority to commit or otherwise obligate the State to purchase or lease any Property

8. **NONDISCRIMINATION**: The parties hereby acknowledge that discrimination in the sale, lease or exchange of property on account of race, sex, color, creed, national origin, age, marital status, familial status, or disability is prohibited by law and may be grounds for contract cancellation.

9. **OTHER COMPENSATION ISSUES**:
A. Final negotiated compensation to Broker shall be disclosed to the State prior to Lease award.
B. Broker is authorized to divide compensation with other brokers in any manner acceptable to Broker.
C. In the event that the State elects not to lease Property during the term hereof or otherwise cancels this agreement, the State is under no obligation to pay a Broker fee or any other compensation.

CONFLICT OF INTEREST

Broker agrees to the following conditions of this Project Assignment.

_____ Initial ☐ Broker, affiliates, subsidiaries, subcontractors and immediate family will not represent any potential bidders for this project.

_____ Initial ☐ Broker, will not propose any locations as leased space where an ownership interest or beneficial business relationship exists among its principals, employees, affiliates, subsidiaries, subcontractors or immediate family.

_____ Initial ☐ Broker has no other conflict of interest on this project.

_____ Initial ☐ Broker has one of the conflict of interest listed above and chooses to reject this project assignment. In the event Broker rejects this assignment due to a conflict of interest, Broker may represent a bidder or owner on this project.

On behalf of the State:

_____Date:_____
Signature

Robert M. Burns
Director, Real Estate Division
Department of Technology, Management & Budget

State of Michigan, County of Ingham

The foregoing instrument was acknowledged before me on this _____ day of _____,
20 , by Robert Burns, Director of the Real Estate Division of the Michigan Department of Technology, Management & Budget.

_____, Notary Public in the County of _____.

Acting in the County of _____, State of Michigan.

_____ Broker Initial _____ State Initial

My commission expires _____.

Broker:

_____Date:_____
Signature

_____
_____
_____

State of Michigan, County of Ingham

The foregoing instrument was acknowledged before me on this _____ day of _____,20 , by _____.

_____, Notary Public in the County of _____.

Acting in the County of _____, State of Michigan.

My commission expires _____.

_____ Broker Initial

_____ State Initial

Attachment E, New Lease Process Checklist

Project #: _____
PS/PA: _____

PS: Property Specialist	**DA:** Dept Analyst	**D:** Division Director	**LM:** Leasing Manager	**A:** Agency	**B:** Broker	**DCD**: Design & Construction

1. Space Request				
1.1	☐	Receive Space Request Form (DTMB-618) and Space Estimator, if applicable	DA	DA
1.2	☐	Assign Space Request in Access database and create "red" folder (paper work file)	DA	DA
1.3	☐	Create Archibus Lease Summary page shell	DA	DA
1.4	☐	Send Project Assignment notification e-mail to Agency/ Specialist/ Broker	DA	DA
2. Project Plan & Agency Notification				
2.1	☐	Create electronic work file on Common drive at Projects-Work Files by Specialist name using "*Project #-Agency-City-Lease #-initials*" format	PS	PS
2.2	☐	Develop Project Plan time frame in Access database and send to Agency/Broker by e-mail (e-mail verbiage in templates)	PS	PS
2.3	☐	Approve Project Plan	A	A/B
2.4	☐	Review cancellation terms of existing agreement	PS	PS
2.5	☐	Draft Agency Notification using template and e-mail to Agency Contacts/RED Staff (use *Agency Notice – Seeking Space* e-mail group in the RED Outlook mailbox)	PS	PS
3. Space Programming				
3.1	☐	Conduct Space Programming Analysis for projects over 10,000 sf (include Design & Construction Division, if applicable)	DA	B
4. Request for Proposals (RFP)				
4.1	☐	Create sub-folder in appropriate Projects-Work Files folder on the Common drive and name it "RFP"	PS	PS/B
4.2	☐	Search target area for potential space and advise owners of pending RFP, direct them to watch the website http://www.michigan.gov/dtmb-realestate, Real Estate Leasing Requests for Proposals	PS/A	B
4.3	☐	Draft the RFP package per the *RFP Checklist*	PS	B
4.4	☐	RFP package peer review	PS	PS
4.5	☐	RFP package to Agency and DCD (if applicable) for approval (including all attachments)	PS	B
4.6	☐	RFP package to RED Director for approval if over 25,000 square feet or $500,000 annual base cost	PS	B
4.7	☐	Confirm LUG information on file with DA and obtain any missing information	PS	PS
4.8	☐	Provide Dept Analyst with completed *RFP Checklist* at least 3 business days prior to scheduled posting date	PS	PS/B
4.9	☐	Notify current lessor in writing of pending RFP	PS	PS
4.10	☐	Post RFP package to Internet	DA	DA
4.11	☐	Send Notification e-mail to LUGs & Notification list from Access database (bc RED, Broker, Agency & Communications Dir)	DA	DA

4.12	☐	Receive RFP questions, draft answers & have peer reviewed	PS	PS/B
4.13	☐	Notify Dept Analyst to post Q & A to internet	PS	PS/B
5. Proposal Review and Award				
5.1	☐	Receive Proposals from Bidders, complete *Proposals Received Memo* & distribute w/proposals to Broker (copy memo only to RED Director, LM & Agency)	PS	PS
5.2	☐	Review Proposals with DCD if over 10,000 square feet	PS	PS
5.3	☐	Schedule and complete site visits with Agency and DCD (notify DTMB-IT of potential sites)	PS	PS
5.4	☐	RED, DCD, and Agency provide site visit comments & disqualification justification, if any	A/PS/ DCD	A/PS/ DCD
5.5	☐	Draft recommendation and complete market analysis	PS	B
5.6	☐	Complete *Final Rent Calculation Worksheet*, if applicable	PS	B
5.7	☐	Send Recommendation to Agency/Specialist	PS	B
5.8	☐	Review/Approve/Reject Recommendation	A	A
5.9	☐	RED Director to review final decision before issuing the recommendation	PS	B
5.10	☐	Prepare and send *Conditional Successful/Non-Successful Bidder Notices* (via e-mail if available), allowing 10 business days for submission of missing legal documents	PS	B
5.11	☐	Review any additional documents received using the *Signature & Legal Documentation Requirements* list	PS	B
6. Lease Agreement				
6.1	☐	Hold Pre-Lease meeting to review lease language with Agency, Lessor and DCD	PS	B
6.2	☐	Finalize Lease document, complete with all enclosures	PS	B
6.3	☐	Notify DTMB Parking (dmb-parking@michigan.gov or 517-373-3420) if staff are being moved to downtown Lansing area	PS	PS
6.4	☐	Send Lease to Specialist (if Broker assignment) for review and approval	PS	B
6.5	☐	Send Lease to Agency for review and approval	PS	B
6.6	☐	Send Lease w/cover communication and all enclosures to Lessor	PS	B
6.7	☐	Prepare final lease package for Attorney General Submission	PS	B
6.8	☐	Peer review of Lease Package in accordance with *Checklist-Lease Peer Review*	PS	PS
7. Approval & Distribution				
7.1	☐	Submit to Attorney General for approval as to legal form	PS	PS
7.2		Attorney General approval **completes** the Broker's portion of this project		
7.3	☐	Submit to JCOS {if needed},Building Committee & State Administrative Board for approval	DA	DA
7.4	☐	Lease terms & conditions meet by Lessor to authorize rent by RED, **Broker can now invoice** the Lessor per the terms of their agreement and not prior to rent authorization.	PS	B

Attachment F, Signature and Legal Documentation Requirements

Revised April 24, 2006

1. **Tenants by the Entirety**
   a. Signatory: Both the husband and wife
   b. Documents: Recorded Deed

2. **Corporation**
   a. Signatory: As indicated in the following documents
   b. Documents: Recorded Deed. Articles of Incorporation. By Laws or Corporate resolution for signature authority.

3. **Partnership**
   a. Signatory: Generally one partner
   b. Documents: Recorded deed. Limited partnership, limited liability partnership, must file certificate with the State.

4. **Tenants in Common**
   a. Signatory: All parties including wives (spouses)
   b. Documents: Recorded deed

5. **Michigan Limited Liability Co. (L.L.C.)**
   a. Signatory: Member/Manager as designated in legal documents
   b. Documents: Recorded deed in name of the L.L.C. Articles of Organization filed with CIS. Operating agreement, if any.

6. **Joint Tenants**
   a. Signatory: Individuals named on the deed.
   b. Documents: Recorded Deed

7. **Owner in Severalty**
   a. Signatory: The individual named, however, if a married man, both husband and wife sign.
   b. Documents: Recorded Deed

8. **Governmental Unit, Municipal Corporations, & Political Subdivisions**
   a. Signatory: Person named in resolution.
   b. Documents: Copies of resolution and governing body meeting minutes showing approval of lease. A copy of the Deed.

9. **Fraternal Organization**
   a. Signatory: Person named in resolution.
   b. Documents: Recorded Deed, copy of resolution authorizing lease and naming signator. By-laws may also be submitted to indicate authorization to sign.

10. **Trust or Estates**
    a. Signatory: Trustee named in trust documents or certificate of trust.
    b. Documents: Recorded Deed and Trust papers to verify trustee has authority to lease.

11. **Court Order- Receivership**
    a. Signatory: Receiver named
    b. Documents: Recorded Deed and Court Order.

12. **Agents**
    a. Signatory: Authorized individual of the Agent.

b. Documents: Recorded Deed and Documents that authorizes agent to sign and who is authorized to sign.

13. Foreign Entity

a. Signatory: Based upon type of organization. (See Above)
b. Documents: Certificate of Registration to do business in Michigan (MCL 450.2011).

14. Misc.

a. "Doing Business As" requires filing of Certificate with County Clerk which is only good for five years.
b. If the lease property is a "condominium" that will require the State to follow the condominium by-laws, a copy of the by-laws is needed and must be reviewed in whole by the Attorney General's office.
c. The names of the organization and the authorized signators must reflect the actual legal name of the organization and signator. All documents and proofs must match the names on the lease documents. If any differences, legal documentation to indicate why there is a difference must be produced for legal examination.
d. Include any amendments for any required document.

Attachment G, Sample Lease Peer Review

Date Submitted: __ SR # _____ Lease #_____
Dept _ PS _ Broker:
Reviewed By/Date: _____

		B/PS	PS
Space	Space Request (DMB-618) & Space Programming Worksheet Present?		
Request	State Agency Notification done? If no, why?		
	Newspaper advertisement done? If no, why?		
Article I	Proper legal documentation in file? Type of legal entity? Does name of grantee(s) on deed match name of Lessor(s)? Is Deed recorded? Is signature authority specified? List legal documents enclosed (separated by a comma):		
Article II 2.1	Does enclosure A match square feet indicated? Does enclosure A clearly and specifically identify location of space? Is it over 25,000 square feet or Is the annual base cost over $500,000? If under 25,000 square feet is the project cost over $1,000,000? Does this lease require JCOS Notification or Approval (above criteria)?		
2.2	Is the full general description of the property clear? Is the common/legal address correct? Is the city/township correct (compare to Deed)?		
2.4	If applicable, does the start date follow the end date of the previous lease/month-to-month agreement? If there is a lapse or overlap of time, why? Does the start date allow for proper approval, construction, etc? *If the start date is before Ad Board approval it will not be processed.* Is the end date accurate *(i.e. not 2/29 when not leap year)*?		
2.5 – 2.8	Are renewal options included? Are the start and end dates appropriate?		
Article III 3.1	Lessor Responsibilities (choose applicable) Do those listed match the proposal? ☐ Gross (full service) ☐ Public Utilities ☐ Telecommunications ☐ Alarm System ☐ Janitorial ☐ Int Maintenance ☐ Ext Maintenance ☐ Dumpsters ☐ Trash/Wastebaskets ☐ Snow Removal ☐ Pest Control ☐ Security ☐ HVAC ☐ Gas ☐ Flourescent ☐ Landscaping ☐ Barrier Free Design Certification (3.1r) received? Fire Marshal Inspection Report (3.1w) received? Certificate of Occupancy (3.1) received? Certificate of Insurance (3.1v) received? Emergency Service Call Record received? What type of parking? ☐ In Common ☐ Reserved Is restriping the Lessor's responsibility?		

3.5 – 3.7	Is there remodeling? If yes, Are the start end dates correct? Are the remodeling specifications identified as Enclosure "___", ___ pages? Is the remodeling detail sufficient and correct? Has the estimate been reviewed by Office of Design & Construction?		
3.11	Do we have first right of refusal? Is the adjacent location properly described?		
Article IV **4.1**	Lessee's Responsibilities (choose applicable) Do those listed match the proposal? ☐ Gross (full service) ☐ Public Utilities ☐ Telecommunications ☐ Alarm System ☐ Janitorial ☐ Int Maintenance ☐ Ext Maintenance ☐ Dumpsters ☐ Trash/Wastebaskets ☐ Snow Removal ☐ Pest Control ☐ Security ☐ HVAC ☐ Gas ☐ Flourescent ☐ Landscaping ☐ Is terminology correct for Lessee's responsibility for Maintenance (4.1j)? Use "None" as applicable		
Article V **5.3**	Are the dates correct? Do they cover the period(s) of time in 2.4 – 2.8? Are the monthly & annual rental rate dollar amounts correct and are they rounded to the nearest dollar? *Sq Ft Rate is Calculated as sq ft $ x # of sq ft = annual rent / 12 = monthly rent* Is this a bonded project? If yes, is the proper rental rate language used?		
5.4	Are there mid-term rental rate changes? If yes, are the dates and dollar amounts correct?		
5.5	Are there renewal options? If yes, are the dates and dollar amounts correct?		
5.6 – 5.7	Is the renewal option included? Is the correct rental installment – Adjustment clause used? 5.6 CPI _____ 5.7 Lump-Sum ____ *Liability insurance is not an adjustable item!* Has the adjustment due date been changed? Is the base information completed? Which tax adjustment clause was used? ☐ new construction ☐ existing facility If adjustment language has been changed, has the Adjustment Processor reviewed it?		
5.12	Get Ready Costs – is the amount supported by Design & Construction?		
Article VI **6.3**	Is there an option to purchase? If yes, what time frame option was used? ☐ A ☐ B ☐ C		
Article XI **11.1**	Standard Cancellation? Notice Required? *If no, provide date approval received and flag approval in work file.* Reason for non-standard cancellation?		

ADDITIONAL COMMENTS: