

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

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B4300031
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Calyptus Consulting Group, Inc. 222 Third Street, Suite 2242 Cambridge, MA 02142	George L. Harris	gharris@calyptusgroup.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(617) 577-0041	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Heather Calahan	(517) 241-7119	calahanh@michigan.gov
BUYER	DTMB	Mary Ostrowski	(517) 284-7021	ostrowskim@michigan.gov

CONTRACT SUMMARY:			
Spend Analysis for the entire State of Michigan			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
November 4, 2013	November 4, 2016	N/A	November 4, 2016
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
See Pricing and Payment Schedule	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		November 4, 2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$13,500.00		\$100,000.00		
Effective September 29, 2014, this Contract is hereby increased by \$13,500.00 for additional spend analysis services. Please note the buyer has been changed to Mary Ostrowski.				
All other terms, conditions, specifications and pricing remain the same.				
Per DTMB Procurement request and approval.				

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

January 7, 2014

CHANGE NOTICE NO. 1

To

CONTRACT NO. 071B4300031

Between

THE STATE OF MICHIGAN

And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Calyptus Consulting Group, Inc. 222 Third Street, Suite 2242 Cambridge, MA 02142	George L. Harris	gharris@calyptusgroup.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	617-577-0041	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Heather Calahan	517-241-7119	Calahanh@michigan.gov
BUYER:	DTMB	Jon Fowler	517-335-4167	Fowlerj7@michigan.gov

INITIAL CONTRACT SUMMARY:			
DESCRIPTION: Spend Analysis for the entire State of Michigan			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	November 4, 2013	November 4, 2016	N/A
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
See Pricing & Payment Schedule	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:	
OPTION EXERCISED: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	IF YES, NEW EXPIRATION DATE:
<p>Effective the date of signature by both parties, the original Spend Analysis PROJECT PLAN in the contract is replaced with the attached revised Spend Analysis PROJECT PLAN and the original Spend Analysis PRICING AND PAYMENT SCHEDULE in the contract is replaced with the attached revised Spend Analysis PRICING AND PAYMENT SCHEDULE.</p>	
VALUE/COST OF CHANGE NOTICE:	\$0.00
ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	\$86,500.00



**STATE OF MICHIGAN – SPEND ANALYSIS
PROJECT PLAN (REVISED)**

State of Michigan – Spend Analysis						
Original Phase/Task	Start Date	Initial Completion Date	Revised Task	Revised Task Completion Date	Completed Deliverables	Status
Phase I: Conduct Spend Analysis and Category Planning						
Task 1. Conduct interviews with Internal staff						
1.a Develop Meeting Agendas and Outcomes	11/4/2013	11/8/2013	No Revision	No Revision	Meeting Agenda and Expected Outcomes	Held kick-off meeting on 11/8/2013
1.b Conduct Interviews	11/8/2013	11/18/2013	No Revision	12/10/2013	List of Interviews Conducted	Interviews conducted in person and via telephone with department stakeholders. Completion of interviews was delayed due to shifting timeframe for analysis tasks.
1.b Document Meeting Results	11/8/2013	11/18/2013	No Revision	12/20/2013	Results of Departmental Meetings	Completion of interviews was delayed due to shifting timeframe for analysis tasks.
Task 2. Collect spend data						
2.a Establish Spend Analysis Objectives	11/14/2013	11/18/2013	No Revision	11/14/2013	List of Objectives	Held call on 11/14/2013 in which DTMB requested the analysis portion of the project be accelerated to provide recommendations on immediate sourcing opportunities by 11/29/2013.
2.b Determine Systems and Databases	11/14/2013	11/18/2013	No Revision	11/12/2013	List of Data Sources	Met with staff members from the MIDB Team on 11/8/2013 and 11/12/2013 to determine sources of data.
2.c Determine Chart of Accounts	11/14/2013	11/18/2013	No Revision	11/8/2013	Validated Chart of Accounts	Met with staff members from the MIDB Team and Finance on 11/8/2013 to obtain data on the chart of accounts underlying the Michigan Transparency data.
2.d Define Lowest Level of Data to be Obtained	11/14/2013	11/18/2013	No Revision	11/21/2013	List of Categories and Data Attributes to be Collected	Met with staff members from the MIDB Team on 11/8/2013, 11/12/2013, and 11/21/2013 to identify the data to be obtained and begin data extraction efforts.
2.e Download files in .csv Format	11/18/2013	11/20/2013	No Revision	11/22/2013	Raw spend data from all sources	Received data on 11/14/2013, 11/15/2013, 11/18/2013, and 11/22/2013.
2.f Cleanse Data	11/20/2013	11/27/2013	No Revision	12/16/2013	Cleansed Spend Data	Cleansed initial RSTARS data set on 11/26/2013, data was further refined on 12/4/2013 as a result of discussions with DTMB staff. Determination was made on 12/12/2013 to use data from

						ADPICS; anticipated completion date for cleansing this data is 12/16/2013.
Task 3. Complete spend analysis						
3.a Develop Detailed Spend Tree	11/25/2013	12/6/2013	No Revision	12/23/2013	Draft Spend Tree	Completion of spend tree was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for providing the spend tree is 12/23/2013.
3.b Determine Addressable Spend and Revise Spend Tree as Needed	12/6/2013	12/11/2013	Validate Spend Data	12/16/2013	Original: Validated Spend Tree Revised: Validated Spend Data	Determination was made on 12/12/2013 to use data from ADPICS; anticipated completion date for validating this data is 12/16/2013.
3.c Develop Detailed Spend Information	12/11/2013	12/20/2013	Provide Category and Supplier Analysis	Supplier Analysis Data 12/16/2013 Category and Supplier Analysis 12/23/2013	Complete Analysis of Spend REV: Supplier Analysis Data REV: Category Analysis	<p>Completion of the category analysis was accelerated at the request of DTMB and a supplier analysis was requested.</p> <p>An initial category analysis based on data from RSTARS was submitted on 12/2/2013 and a revised analysis was submitted on 12/5/2013.</p> <p>An initial supplier analysis based on data from RSTARS was submitted on 12/4/2013 and a revised supplier analysis was submitted on 12/11/2013.</p> <p>On 12/13/2013 the team made the determination to use data from ADPICS and re-run the analysis using data on PO Line items, Direct Vouchers, and P-Card spend. New completion dates were discussed as follows:</p> <ol style="list-style-type: none"> 1. Supplier analysis data to be provided as three spreadsheets based on the data sources above. Data on DHS contracts to be included if possible. Initial spreadsheets due 12/16/2013 for validation review. 2. Analysis of suppliers by category to be provided as spreadsheets as soon as possible but no later than 12/23/2013. 3. Category analysis document to be provided as a word document no later than 12/23/2013
Phase II: Develop and Execute Sourcing Plans						
Task 4. Evaluate Spending Practices						

4.a Identify Current Spending Practices	12/11/2013	12/18/2013	No Revision	1/15/2014	List of Current Practices	Research into agency contracts and spend by agency was started on 11/22/2013. Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for identifying current spending practices is 1/8/2014.
4.b Benchmark Spending Practices Against Best Practice	12/11/2013	12/18/2013	No Revision	1/15/2014	Benchmarking Results	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for benchmarking spending practices is 1/8/2014.
4.c Develop Map of Current Spending Practices	12/11/2013	12/18/2013	No Revision	1/22/2014	Map of Current Practices	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for mapping spending practices is 1/8/2014.
4.d Develop Findings and Recommendations	12/18/2013	12/27/2013	No Revision	1/31/2014	Recommended Best Practices	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for developing findings and recommendations is 1/8/2014.
Task 5. Develop List of Cost Savings Opportunities						
5.a Define Category Scope and Identify Markets	12/27/2013	12/27/2013	No Revision	1/3/2014	List of Categories and Sub-Categories	DTMB requested the analysis portion of the project be accelerated to provide recommendations on immediate sourcing opportunities by 11/29/2013. An initial category analysis using RSTARS data was submitted on 12/2/2013 and a revised analysis was submitted on 12/5/2013. On 12/13/2013 the team made the determination to use data from ADPICS and re-run the analysis using data on PO Line items, Direct Vouchers, and P-Card spend. The anticipated completion date for defining the category scope and identifying markets is 1/3/2014.
5.b Conduct Market Analysis and Evaluate the Industry	12/27/2013	1/8/2014	No Revision	1/17/2014	Industry Data	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for evaluating the industry is 1/17/2014.
5.c Conduct Benchmarking, Research Pricing Trends, and Develop Market Profiles	12/27/2013	1/8/2013	No Revision	1/24/2014	Complete Market Analysis and Pricing Recommendations	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for conducting benchmarking and completing the market analysis and pricing recommendations is 1/24/2014.
5.d Develop Category Profile and Goals	1/8/2014	1/16/2014	No Revision	1/31/2014	Category Profiles	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for developing category profile and goals is 1/31/2014.

5.e Develop Category Strategies	1/8/2014	1/16/2014	No Revision	1/31/2014	Category Strategies	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for developing category strategies is 1/31/2014.
5.f Identify Risks and Develop Mitigation Plans	1/8/2014	1/16/2014	No Revision	1/31/2014	Risk Mitigation Plans	Completion was delayed due to shifting timeframe for analysis tasks. Anticipated completion date for identifying risks and developing mitigation plans is 1/31/2014.
5.g Develop List of Savings Opportunities	1/16/2014	1/24/2014	No Revision	2/7/2014	Prioritized List of Opportunities	DTMB requested the analysis portion of the project be accelerated to provide recommendations on immediate sourcing opportunities by 11/29/2013. An initial category analysis using RSTARS data was submitted on 12/2/2013 and a revised analysis was submitted on 12/5/2013 which included 6 opportunities for immediate sourcing projects. On 12/13/2013 the team made the determination to use data from ADPICS for the remaining analysis. The anticipated completion date for providing the final prioritized list of opportunities based on the ADPICS data and market research is 2/7/2014.
Task 6. Create Final Report and Conduct Final Presentation						
6.a Deliver Final Report	1/27/2014	1/31/2014	No Revision	2/14/2014	Final Report	Delayed due to shifting timeframe for analysis tasks.
6.b Conduct Final Presentation	1/27/2014	2/7/2014	No Revision	2/21/2014	Explanation of Cost-Saving Recommendations with Q&A Session	Delayed due to shifting timeframe for analysis tasks.

PRICING AND PAYMENT SCHEDULE (REVISED)

The Contractors rate for a spend analysis project is based on the following rates:

Consultant: \$125 an hour

Support Analyst: \$100 an hour

Pricing for the State of Michigan Spend Analysis Project

This is a fixed priced contract. The Contractor will receive \$86,500 for completion of all Contract Activities. This includes travel and all other costs.

Payment Schedule

The Contractor must invoice and will be paid upon State acceptance of the Contract Activities as follows:

\$17,300 upon delivery and State acceptance of the report submitted after initial interviews.

\$15,000 upon delivery and State acceptance of the initial supplier analysis and the initial category analysis.

\$25,950 upon delivery and State acceptance of the finalized spend tree, complete market analysis, and pricing recommendations.

\$28,250 upon delivery and State acceptance of the final report and presentation.

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NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Calyptus Consulting Group, Inc. 222 Third Street, Suite 2242 Cambridge, MA 02142	George L. Harris	gharris@calyptusgroup.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	617-577-0041	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROJECT MANAGER:	DTMB	Heather Calahan	517-241-7119	Calahanh@michigan.gov
BUYER:	DTMB	Jon Fowler	517-335-4167	Fowlerj7@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Spend Analysis for the entire State of Michigan			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	November 4, 2013	November 4, 2016	N/A
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
See Pricing & Payment Schedule	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input checked="" type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$86,500.00

FOR THE CONTRACTOR:

Calyptus Consulting Group, Inc.

Firm Name

Authorized Agent Signature

George Harris

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee/Chief Procurement Officer

Name/Title

DTMB Procurement

Enter Name of Agency

Date

STATE OF MICHIGAN

STATEMENT OF WORK

Requirements

1. Specifications

The Contractor must complete the following steps and provide the following Contract Activities:

Interviews:

The Contractor must attend an initial project meeting at DTMB to meet key State employees and conduct initial interviews. These individuals include, but are not limited to: Jon Fowler, Mike Bliss, Judy Thelen, Chris Mitchell, Jeff Brownlee, Heather Calahan, Steve Davis, Julie Earle, Jodi Messer, and Michael Moody.

The Contractor must provide a report identifying each individual interviewed, information obtained, and any issues or additional work or steps needed as a result of the information collected.

Spend Database:

The Contractor must collect, clean, normalize, validate, categorize, review of all direct and indirect spending data for the State at both the DTMB-Procurement and agency levels. The spend data will be derived from hard copy documents, and from within various electronic systems, including, but not limited to: MICHIGAN, agency Electronic Records Processing and accounting systems, and other databases used to track purchases and expenditures. The spend data must contain the three most recent fiscal years of spend data.

The Contractor must provide the State a modifiable and non-modifiable (i.e. PDF) copies of a complete database that identifies all the State spend data.

Final Report and Presentation:

The Contractor must provide a final hard copy and a modifiable and non-modifiable electronic report (in a form identified by the State) of the spend analysis that includes, but is not limited to:

- Methodology of the spend analysis;
- Identification and categorization of all spend Statewide and by each State Agency, including but not limited to types of spend (i.e. Commodities, Services, Special purchases, etc.) with:
 - Spend information providing a general summary for the type of spend
 - Categories of spend within the type of spend and total type of spend displayed by agency and division
 - The top 25 providers for the type of spend, shared providers, and spend by provider
 - The number and type of payments (i.e. direct voucher, EFT, P-card, etc.)
 - Spend by category showing for each category the top 10 providers and spend displayed by agency and division
- Identification and review of spending patterns and procedures to identify and quantify opportunities for savings, including but not limited to:
 - Identification of the non-use of statewide contracts and blanket purchase orders for spending
 - Identification of spending for similar goods or services not purchased through contract
 - Identification of spending on multiple contracts that can be combined
- Benchmarking for current pricing and comparing State spending with private and public best spending practices;
- Identification and recommendation of prioritized cost saving opportunities, including but not limited to recommendations with:
 - Sourcing strategies showing total spend, the current situation, key providers, implementation constraints, market dynamics, recommended strategies, and estimated potential savings
 - Market analyses showing top providers, market dynamics, new entrants, substitutes, provider power, buyer power, intra-industry rivalry, industry cost structure, cost and pricing, action required, and potential savings
- Necessary appendices, including but not limited to results from all spend analysis tools used;

The Contractor must provide the final report to the State at least 7 calendar days prior to the on-site presentation.

The Contractor must provide an on-site final presentation to the State, at a time and location identified by the State. The State will determine the approved attendees. The final presentation must include a detailed review of the final report, and a discussion on future opportunities and recommendations. The Contractor must also allow the State a question and answer session.

The State may request at any time during the term of this contract a subsequent spend analysis substantially similar in scope and pursuant to the terms of this contract.

2. Time Frames

The Contractor will begin Contract Activities within 10 calendar days and complete all Contract Activities within 90 calendar days from the date that both parties sign the Contract.

3. Weekly Reporting

The Contractor must submit electronic weekly progress reports that provide a project status update. The reports must indicate the work performed on each task included in the Project Plan and note if each task remains on schedule or is delayed.

4. Meetings

The Contractor must attend an initial meeting on November 8, 2013 at a State location, identified by the State.

The Contractor must attend weekly update meetings by phone, video conference, or on on-site as determined by the State. "On-site" is a state location identified by the State.

5. Staffing

The Contractor's personnel must perform Contract Activities on-site at a minimum of 40% of the time during the first 60 days after both parties sign the Contract.

6. Security

The Contractor's personnel will be subject to the standard security procedures for employment at the State of Michigan, including criminal background checks necessary for building access, and limited network access. The Contractor's personnel must provide the necessary signatures for State of Michigan IT agreements, etc.

The Contractor will use a secure server to store all State of Michigan data and the server must be backed up to a secure drive in 15 minute intervals.

7. Invoice Requirements

The Contractor must meet all State invoicing requirements. Invoices must include: (a) date; (b) purchase order number; (c) description of the Contract Activities; and (d) total price.

State of Michigan – Spend Analysis – PROJECT PLAN

Phase/Task	Start Date	Completion Date	Completed Deliverables
Phase I: Conduct Spend Analysis and Category Planning			
Task 1. Conduct interviews with Internal staff			
1.a Develop Meeting Agendas and Outcomes	11/8/2013	11/8/2013	Meeting Agenda and Expected Outcomes
1.b Conduct Interviews	11/8/2013	11/18/2013	List of Interviews Conducted
1.b Document Meeting Results	11/8/2013	11/18/2013	Results of Departmental Meetings
Task 2. Collect spend data			
2.a Establish Spend Analysis Objectives	11/14/2013	11/18/2013	List of Objectives
2.b Determine Systems and Databases	11/14/2013	11/18/2013	List of Data Sources
2.c Determine Chart of Accounts	11/14/2013	11/18/2013	Validated Chart of Accounts
2.d Define Lowest Level of Data to be Obtained	11/14/2013	11/18/2013	List of Categories and Data Attributes to be Collected
2.e Download files in .csv Format	11/18/2013	11/20/2013	Raw spend data from all sources
2.f Cleanse Data	11/20/2013	11/27/2013	Cleansed Spend Data
Task 3. Complete spend analysis			
3.a Develop Detailed Spend Tree	11/25/2013	12/6/2013	Draft Spend Tree
3.b Determine Addressable Spend and Revise Spend Tree as Needed	12/6/2013	12/11/2013	Validated Spend Tree
3.c Develop Detailed Spend Information	12/11/2013	12/20/2013	Complete Analysis of Spend
Phase II: Develop and Execute Sourcing Plans			
Task 4. Validate Market and Evaluate Current Pricing			
4.a Identify Markets to Consider	12/2/2013	12/6/2013	List of Markets to Analyze
4.b Conduct Market Analysis	12/6/2013	12/18/2013	Market Data
4.c Research Pricing Trends	12/6/2013	12/18/2013	Pricing Data
4.d Develop Detailed Market Profiles	12/18/2013	12/27/2013	Complete Market Analysis and Pricing Recommendations
Task 5. Evaluate Spending Practices			
5.a Identify Current Spending Practices	12/11/2013	12/18/2013	List of Current Practices
5.b Benchmark Spending Practices Against Best Practice	12/11/2013	12/18/2013	Benchmarking Results
5.c Develop Map of Current Spending Practices	12/11/2013	12/18/2013	Map of Current Practices
5.d Develop Findings and Recommendations	12/18/2013	12/27/2013	Recommended Best Practices
Task 6. Develop List of Cost Savings Opportunities			
6.a Define Category Scope	12/27/2013	12/27/2013	List of Categories and Sub-Categories
6.b Define End User Needs and Expectations	12/27/2013	1/3/2014	Map of End User Expectations
6.c Evaluate the Industry	12/27/2013	1/8/2014	Industry Data
6.d Conduct Benchmarking	12/27/2013	1/8/2013	Benchmarking Results

6.e Develop Category Profile and Goals	1/8/2014	1/16/2014	Category Profiles
6.f Develop Category Strategies	1/8/2014	1/16/2014	Category Strategies
6.g Identify Risks and Develop Mitigation Plans	1/8/2014	1/16/2014	Risk Mitigation Plans
6.h Develop List of Savings Opportunities	1/16/2014	1/24/2014	Prioritized List of Opportunities
Task 7. Create Final Report and Conduct Final Presentation			
7.a Deliver Final Report	1/27/2014	1/31/2014	Final Report
7.b Conduct Final Presentation	1/27/2014	2/7/2014	Explanation of Cost-Saving Recommendations with Q&A session.

The tasks identified above are further explained, but not limited to the information provided in the sections below. The tasks necessary may be modified based on additional requirements identified by the State.

Phase I: Conduct Spend Analysis and Category Planning

Task 1: Conduct Staff Interviews

The Contractor will interview State employees to understand: Statewide and agency specific systems, and data collection and storage processes. At the end of this Phase, the Contractor must provide a report identifying each individual interviewed, information obtained, and any indicate any issues or additional work or steps needed as a result of the information collected.

Task 2: Collect Data

The Contractor will collect State spend data available to develop a complete spend analysis. The process may require the Contractor to physically review individual Statements of Work, specifications, volumes, and terms of purchases where data is only available through purchase orders. The Contractor will ensure collected spend data is appropriately coded by NIGP commodity code; however, where NIGP codes are not available the Contractor will use the NAICS code for the supplier.

Task 3: Complete a Spend Analysis

The Contractor will create of a spend tree of all State spend. The spend tree will indicate the total State spend by category, number of suppliers by category, and non-addressable spend due to lack of data, regulation, and miscellaneous purchases.

Phase II: Develop and execute Sourcing Plans

The purpose of this phase is to evaluate the current pricing and spending practices at the State, and based on market data determine the opportunities for cost savings. The Contractor will supplement the research with discussions with internal experts. Benchmarking results will be used to identify opportunities for cost savings

Once the current pricing and spending information is compiled, the Contractor will examine it for savings opportunity. Examples include:

- Fragmentation of spend: many suppliers providing the same product or service
- Sharing of suppliers: multiple departments purchasing from one supplier without coordination
- Lack of long term contracts
- Purchases made under unfavorable price steps or levels
- Maverick buying

Using the spend analysis results the Contractor will recognize data gaps and the need to locate untapped resources.

Task 4: Validate Market and Evaluate Current Pricing

The Contractor will investigate the supply market to understand competitive dynamics and available pricing in the marketplace and assess the options available for sourcing from alternative markets and market segments. The Contractor will consider how the category may evolve over time: will the category be integrated with others, will it be replaced by another category or will it be modified? This future view is necessary to allow for the development of prioritized cost savings opportunities that both meets today's requirements and positions the State for the future.

market analysis will be completed. Factors to be considered include: (a) total market size; (b) market share; (c) market trends; (d) product trends; (e) market segments; and (f) driving forces for demand and supply.

The results of this step must include a depiction of the current situation (profile and market constraints), risk analysis, and supplier analysis.

Task 5: Evaluate Spending Practices

The Contractor will review the spending practices of State and benchmark these against private and public best practices. The Contractor will develop a map of the current spending practices including needs identification, procurement methods, contracts management, and invoicing/payment. The map will show information flow, decisions made, cycle time, and output. A key subset of the analysis will be focused on how purchases made are used to calculate cost savings, either anticipated or unplanned.

The Contractor will provide findings and recommendations on:

- eProcurement
- eSourcing
- eAuctioning

- Contract Management
- Supplier Performance Management
- Account Payable

The Contractor will focus its recommendations on how to optimize the current systems in use by the State, both manual and electronic.

Task 6: Develop List of Prioritized Cost Savings Opportunities

The list of cost savings opportunities will include:

- Scope of categories and subcategories
- Return on Investment
- Staffing/team membership
- Training
- Contingencies/obstacles/risks
- Recommended prioritization sourcing projects
- Tools to be used.

Task 7: Create Final Report and Conduct Final Presentation

The Contractor will create a Final Report in hard copy and electronic report (in a form identified by the State) of the spend analysis. The Contractor will deliver the Final Report to the State at least 7 calendar days before conducting a Final Presentation. The Contractor will conduct an on-site Final Presentation at a time and location identified by the State. The Contractor will lead a detailed review and explanation of the Final Presentation that includes a question and answer session.

PRICING AND PAYMENT SCHEDULE

The Contractors rate for a spend analysis project is based on the following rates:

Consultant: \$125 an hour
Support Analyst: \$100 an hour

Pricing for the State of Michigan Spend Analysis Project

This is a fixed priced contract. The Contractor will receive \$86,500 for completion of all Contract Activities. This includes travel and all other costs.

Payment Schedule

The Contractor must invoice and will be paid upon State acceptance of the Contract Activities as follows:

\$17,300 upon delivery and State acceptance of the report submitted after initial interviews.
\$25,950 upon delivery and State acceptance of the analyzed spend data.
\$43,250 upon delivery and State acceptance of the final report and presentation.

CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Calyptus Consulting Group, Inc. ("**Contractor**"), a (state of Massachusetts corporation). This Contract is effective as of the ____ day of November, 2013 ("**Effective Date**"), and unless terminated, expires on the ____ day of November, 2016 (Three years after the Effective Date). This Contract does not automatically renew.

- Duties of Contractor.** The Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a Service.

The Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

The Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all deliverables in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also: (a) be clearly identifiable while on State property by wearing identification issued by the State; and (b) clearly identify themselves whenever making contact with the State.

- Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:

Heather Calahan

calahanh@michigan.gov
517-241-7119

If to Contractor:

George Harris

gharris@calyptusgroup.com
617-577-0041

- Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract:

State:
Heather Calahan

calahanh@michigan.gov
517-241-7119

Contractor:
George Harris

gharris@calyptusgroup.com
617-577-0041

- Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract.

State:
Heather Calahan

calahanh@michigan.gov
517-241-7119

Contractor:
George Harris

gharris@calyptusgroup.com
617-577-0041

The Contractor’s appointed individuals directly responsible for the day to day operations of the Contract, specifically assigned to the State account, and knowledgeable on the contractual requirements are **GEORGE L. HARRIS, JAMESON BEEKMAN, and ALLISON GIANNESCHI**

- Insurance Requirements.** The Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from the Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State, and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$2,000,000 General Aggregate Limit other than Products/Completed Operations; and \$2,000,000 Products/Completed Operations. <u>Aggregate Limit:</u> \$1,000,000 Personal & Advertising Injury Limit; and \$1,000,000 Each Occurrence Limit.	Contractor must have their policy: endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; including a

<u>Deductible Maximum:</u> \$50,000 Each Occurrence	waiver of subrogation; and for a claims-made policy, provide 3 years of tail coverage.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> Vehicle liability insurance as required by law to the extent that a motor vehicle is used to perform the Contract Activities.	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident; \$100,000 Each Employee by Disease; and \$500,000 Aggregate Disease.	Name the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds.

If the Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

The Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

6. **Extended Purchasing Program.** The Contract will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State of Michigan and the Contractor, this Contract may be extended to other states (including governmental subdivisions and authorized entities).

The Contractor must supply all Contract Activities at the established Contract 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.

8. **Independent Contractor.** The Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. The Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. The Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of the Contractor's employees and any subcontractors. Prior performance does not modify the Contractor's status as an independent contractor.
9. **Subcontracting.** The Contractor may not delegate any of its obligations under the Contract without the prior approval of the State. The Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, the Contractor must (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract

in any subcontract with a subcontractor. The Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

10. **Staffing.** The State may require the Contractor to remove or reassign personnel by providing good-faith reasons in a notice to the Contractor.
11. **Background Checks.** Upon request, the Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State, and documentation must be provided as requested. The Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
12. **Assignment.** The Contractor may not assign this Contract, to any other party, without the prior approval of the State.

Upon notice to the Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract, to any other party. If the State determines that a novation of the Contract to a third party is necessary, the Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

13. **Change of Control.** The Contractor will notify, at least 90 calendar days before the effective date, the State of a change in the Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of the Contractor's stock; (b) a sale of substantially all of the Contractor's assets; (c) a change in a majority of the Contractor's board members; (d) consummation of a merger or consolidation of the Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the Board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of the Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, the Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

14. **Ordering.** The Contract, once it has been executed by the State, constitutes an order for the Contract Activities; however, the Contractor must not begin performance until it receives authorization by the State.
15. **Acceptance.** The Contract Activities furnished under this Contract are subject to inspection and testing by the State and at a place determined by the State ("**State Review Period**"), unless otherwise provided in Exhibit A. The State will inspect and test the Contract Activities within 30 calendar days from the date the State receives the Contract Activities. If the Contract Activities are not fully accepted by the State, the State will notify the Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 16.

Within 10 business days, or another period of time specified in Exhibit A, from the date of the Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, the Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves the Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If the Contractor is unable or refuses to correct the deficiency, within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 16. Delivery.** The Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by the Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance. .
- 17. Risk of Loss.** Until final acceptance, risk of loss or damage remains with the Contractor. The Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report, to the Contractor, any evidence of visible damage. If the State rejects the deliverables, the Contractor must remove them from the premises within 10 days after notification of rejection. The risk of loss of rejected or non-conforming deliverables remains with the Contractor. Rejected deliverables not removed by the Contractor within 10 days will be deemed abandoned by the Contractor, and the State will have the right to dispose of it as its own property. The Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected deliverables.
- 18. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 30 days of the State's receipt. The Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify the Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to the Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). The Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If the Contractor does not register, the State is not liable for failure to provide payment.

- 19. Stop Work Order.** The State may, in its sole discretion, suspend any or all activities under the Contract at any time. The State will provide the Contractor a written Stop Work Order detailing the suspension. After receiving a Stop Work Order, the Contractor must comply with the order. Within 90 days, or any longer period agreed to by the Contractor, the State will either: (a) issue a notice authorizing the Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, the Contractor's lost profits, or any additional compensation during a stop work period.
- 20. Termination for Cause.** The State may immediately terminate this Contract, in whole or in part, for cause by notifying the Contractor if the Contractor: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) as determined by the State, engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time specific (not less than 30 days) in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material. If the State terminates this Contract for cause and it is determined that the Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources. The State will only pay those amounts, if any, due and owing to the Contractor for Contract Activities actually rendered and accepted by the State, and for which invoices were properly submitted, up to and including the date of termination of the Contract, subject to the State's right of setoff to any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract.

21. Termination for Convenience. The State may terminate this Contract, in whole or in part, and without penalty, if the State determines that a termination is in the State's best interest. A termination under this Section, includes, but is not limited to appropriation shortfalls. If the State terminates this Contract under this Section, the State will issue a termination notice that will specify whether the Contractor must: (a) cease performance immediately; or (b) continue to perform for a specified period from receipt of the notification. Upon termination, the State will only pay those amounts, if any, due and owing to the Contractor for Contract Activities actually rendered and accepted by the State, and for which invoices were properly submitted, up to and including the date of termination of the Contract.

The State will pay the Contractor all charges due for Contract Activities provided up to and including the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage completion determined by the State

22. General Indemnification. The Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and its employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by the Contractor (or any of its employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, or warranties contained in this Contract; (b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by the Contractor (or any of its employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (c) any acts or omissions of the Contractor (or any of its employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify the Contractor in writing whenever indemnification is being sought; however, failure to do so will not relieve Contractor, except to the extent that the Contractor is materially prejudiced. The Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out the defense and indemnity obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and (iv) retain control of the defense if the State deems necessary. The Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any claim, action or proceeding. To the extent that any State employee, official or 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.

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. Any attorney representing the State may be required to be designated as a Special Assistant Attorney General.

23. Intellectual Property Indemnification. The Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and its employees harmless, without limitation, from and against any claims arising out of or relating to copyright, patent, trademark, or trade secret infringement. Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State under Section 23(d) for, or to pay any costs, damages or attorneys' fees related to any infringement claim that arises out of: (i) compliance with designs, plans, or specifications furnished by or on behalf of the State as to any piece of equipment, software, commodity, or service; (ii) use of the equipment, software, commodity or service in a manner for which the same was neither designed nor contemplated; or (iii) the combination, operation or use of the equipment, software or commodity with equipment, software or commodities not supplied by the Contractor under this Contract.

If, in either party's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, the Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or, if this option is not reasonably available to the Contractor; (b) replace or modify the same so that it becomes non-infringing; or, (c) 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.

- 24. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of any action.
- 25. Disclosure of Litigation, or other Proceeding.** The Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving the Contractor, a subcontractor, or an officer or director of the Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect the Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving revocation or suspension of any license that the Contractor is required to perform under this Contract.
- 26. State of Michigan Data.** All data provided to the Contractor by the State, or any information derived from such data, is the exclusive property of the State ("**State Data**"). Upon request, the Contractor must provide to the State, or a third party identified by the State, all State Data within 10 calendar days of the request and in the form (e.g., electronic, hard copy, flash drive) requested by the State. The Contractor will assume all costs incurred in compiling and supplying State Data.
- 27. Confidential Information.** The Contractor acknowledges it could review, possess, or maintain confidential information of the State. "Confidential Information" of the State means any information of the State.

The Contractor must use at least the same degree of care to prevent disclosure of the State's Confidential Information to third parties as it uses to prevent unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. The Contractor will not (i) make any use of the Confidential Information except as specified by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information, or (iii) refuse for any reason to promptly return the State's Confidential Information if requested. The Contractor must limit disclosure of the State'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 who had 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.

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. The Contractor will cooperate with the State to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. After becoming aware of any suspected or actual use or disclosure of Confidential Information other than as specified by the Contract the Contractor must report to the State, in writing, within 72 hours or shorter time period reasonable under the circumstances.

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.

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

- 28. Records Maintenance, Inspection, Examination, and Audit.** Under MCL 18.1470, the State or its designee may audit the Contractor to verify compliance with this Contract. The Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues are resolved.

Within 10 days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect the Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. The Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to the Contractor, any parent, affiliate, or subsidiary organization of the Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 29. Warranties and Representations.** The Contractor represents and warrants: (a) the Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and the Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) the Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by the Contractor in connection with the Contract fairly and accurately represents the Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made to the State in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of fact or omits any fact that would make the information misleading. Any breach of this section is considered a material breach.
- 30. Conflicts and Ethics.** The Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for the Contractor, any consideration contingent upon the award of the Contract. The Contractor must immediately notify the State of any violation or potential violation of these standards. This section applies to the Contractor, any parent, affiliate, or subsidiary organization of the Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 31. Compliance with Laws.** The Contractor must comply with all federal, state and local laws, rules and regulations. The Contractor agrees to comply with article 11, §5 of the Michigan Constitution 1963, and all applicable State Civil Service Commission rules and regulations, including but not limited to civil service Rule 2-20, Workplace Safety, and Rule 1-8.3, Discriminatory Harassment. A breach of this section is considered a material breach.
- 32. Nondiscrimination.** Under the Elliott-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.*, the Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 33. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 34. Governing Law.** This Contract is governed by the laws of the State of Michigan and any superseding federal laws. Any dispute arising from this Contract must be resolved in the State of Michigan. The Contractor consents to venue in Ingham County, and waives any objections it may have such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.
- 35. Non-Exclusivity.** Nothing contained in this Contract is intended nor shall be construed as creating any requirements contract with the Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal or like Contract Activities from other sources.

36. Force Majeure. Neither the State nor the Contractor will be in breach of this Contract because of any failure arising from causes beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. The Contractor will not be relieved of a breach or delay caused by its subcontractors unless the subcontractor experiences a force majeure and cannot reasonably circumvent the effect through other means. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

37. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executives and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy.

This section does not limit the State's right to terminate the Contract.

38. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the 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 of the State.

39. Website Incorporation. The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

40. Order of Precedence. In the event of a conflict between the terms and conditions of the Contract, the Exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) Exhibit B; and (e) the Contract.

41. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

42. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

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

44. Entire Contract and Modification. This Contract and its Exhibits represents the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").