

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

**NOTICE  
 OF  
 CONTRACT NO. 071B4300078**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Accenture LLP 3000 Town Center, Suite 2400 Southfield, MI 48075	James Rice	<a href="mailto:James.h.rice@accenture.com">James.h.rice@accenture.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 515-3028	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Rock Rakowski	517-373-8059	<a href="mailto:rakowskij@michigan.gov">rakowskij@michigan.gov</a>
BUYER:	DTMB	Mike Breen	517-284-7002	<a href="mailto:breenm@michigan.gov">breenm@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Enterprise Risk Assessment			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
1 year	May 20, 2014	May 19, 2015	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$998,750.00

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

**CONTRACT NO. 071B4300078**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Accenture LLP 3000 Town Center, Suite 2400 Southfield, MI 48075	James Rice	<a href="mailto:James.h.rice@accenture.com">James.h.rice@accenture.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 515-3028	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Rock Rakowski	517-373-8059	<a href="mailto:rakowskij@michigan.gov">rakowskij@michigan.gov</a>
BUYER:	DTMB	Mike Breen	517-284-7002	<a href="mailto:breenm@michigan.gov">breenm@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Enterprise Risk Assessment			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
1 year	May 20, 2014	May 19, 2015	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$998,750.00	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #084R3200044. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

**Notice of Contract #: 071B4300078**

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



**Table of Contents**

<b><u>Article 1 – Statement of Work (SOW)</u></b>	<b>8</b>
<b><u>1.000 Project Identification</u></b>	<b>8</b>
<u>1.001 Project Request</u>	8
<u>1.002 Background</u>	8
<b><u>1.100 Scope of Work and Deliverables</u></b>	<b>8</b>
<u>1.101 In Scope</u>	8
<u>1.102 Out Of Scope</u>	9
<u>1.103 Environment</u>	9
<b><u>Evaluation of the Current Environment</u></b>	<b>13</b>
<b><u>Weeks 6-9: Cloud Architecture, Five Critical Systems, and Source Code</u></b>	<b>17</b>
<b><u>Additional Opportunities Deliverable</u></b>	<b>21</b>
<b><u>Maturity and Gap Analysis Deliverable</u></b>	<b>21</b>
<b><u>Recommendations Deliverable</u></b>	<b>22</b>
<b><u>Phase 2 Deliverables</u></b>	<b>24</b>
<b><u>1.200 Roles and Responsibilities</u></b>	<b>26</b>
<u>1.201 Contractor Staff, Roles, And Responsibilities</u>	26
<u>1.202 State Staff, Roles, And Responsibilities</u>	27
<u>1.203 Reserved</u>	29
<b><u>1.300 Project Plan</u></b>	<b>29</b>
<u>1.301 Project Plan Management</u>	29
<u>1.302 Reports</u>	30
<b><u>1.400 Project Management</u></b>	<b>31</b>
<u>1.401 Issue Management</u>	31
<u>1.402 Risk Management</u>	31
<u>1.403 Change Management</u>	32
<b><u>1.500 Acceptance</u></b>	<b>32</b>
<u>1.501 Criteria</u>	32
<u>1.502 Final Acceptance</u>	32
<b><u>1.600 Compensation and Payment</u></b>	<b>33</b>
<u>1.601 Compensation And Payment</u>	33
<b><u>Article 2, Terms and Conditions</u></b>	<b>36</b>
<b><u>2.000 Contract Structure and Term</u></b>	<b>36</b>
<u>2.001 Contract Term</u>	36
<u>2.002 Options to Renew</u>	36
<u>2.003 Legal Effect</u>	36
<u>2.004 Attachments &amp; Exhibits</u>	36
<u>2.005 Ordering</u>	36
<u>2.006 Order of Precedence</u>	36
<u>2.007 Headings</u>	37
<u>2.008 Form, Function &amp; Utility</u>	37
<u>2.009 Reformation and Severability</u>	37
<b><u>2.010 Consents and Approvals</u></b>	<b>37</b>
<u>2.011 No Waiver of Default</u>	37
<u>2.012 Survival</u>	37
<b><u>2.020 Contract Administration</u></b>	<b>37</b>
<u>2.021 Issuing Office</u>	37
<u>2.022 Contract Compliance Inspector</u>	38
<u>2.023 Project Manager</u>	38
<u>2.024 Change Requests</u>	38



<a href="#">2.025</a>	<a href="#">Notices</a>	39
<a href="#">2.026</a>	<a href="#">Binding Commitments</a>	40
<a href="#">2.027</a>	<a href="#">Relationship of the Parties</a>	40
<a href="#">2.028</a>	<a href="#">Covenant of Good Faith</a>	40
<a href="#">2.029</a>	<a href="#">Assignments</a>	40
<b><a href="#">2.030</a></b>	<b><a href="#">General Provisions</a></b>	<b>40</b>
<a href="#">2.031</a>	<a href="#">Administrative Fee and Reporting</a>	40
<a href="#">2.032</a>	<a href="#">Media Releases</a>	41
<a href="#">2.033</a>	<a href="#">Contract Distribution</a>	41
<a href="#">2.034</a>	<a href="#">Permits</a>	41
<a href="#">2.035</a>	<a href="#">Website Incorporation</a>	41
<a href="#">2.036</a>	<a href="#">Future Bidding Preclusion</a>	41
<a href="#">2.037</a>	<a href="#">Freedom of Information</a>	41
<a href="#">2.038</a>	<a href="#">Disaster Recovery</a>	41
<b><a href="#">2.040</a></b>	<b><a href="#">Financial Provisions</a></b>	<b>42</b>
<a href="#">2.041</a>	<a href="#">Fixed Prices for Services/Deliverables</a>	42
<a href="#">2.042</a>	<a href="#">Adjustments for Reductions in Scope of Services/Deliverables</a>	42
<a href="#">2.043</a>	<a href="#">Services/Deliverables Covered</a>	42
<a href="#">2.044</a>	<a href="#">Invoicing and Payment – In General</a>	42
<a href="#">2.045</a>	<a href="#">Pro-ration</a>	43
<a href="#">2.046</a>	<a href="#">Antitrust Assignment</a>	43
<a href="#">2.047</a>	<a href="#">Final Payment</a>	43
<a href="#">2.048</a>	<a href="#">Electronic Payment Requirement</a>	43
<b><a href="#">2.050</a></b>	<b><a href="#">Taxes</a></b>	<b>43</b>
<a href="#">2.051</a>	<a href="#">Employment Taxes</a>	43
<a href="#">2.052</a>	<a href="#">Sales and Use Taxes</a>	43
<b><a href="#">2.060</a></b>	<b><a href="#">Contract Management</a></b>	<b>43</b>
<a href="#">2.061</a>	<a href="#">Bidder Personnel Qualifications</a>	43
<a href="#">2.062</a>	<a href="#">Bidder Key Personnel</a>	44
<a href="#">2.063</a>	<a href="#">Re-assignment of Personnel at the State’s Request</a>	45
<a href="#">2.064</a>	<a href="#">Bidder Personnel Location</a>	45
<a href="#">2.065</a>	<a href="#">Bidder Identification</a>	45
<a href="#">2.066</a>	<a href="#">Cooperation with Third Parties</a>	45
<a href="#">2.067</a>	<a href="#">Contract Management Responsibilities</a>	45
<a href="#">2.068</a>	<a href="#">Bidder Return of State Equipment/Resources</a>	46
<b><a href="#">2.070</a></b>	<b><a href="#">Subcontracting by Bidder</a></b>	<b>46</b>
<a href="#">2.071</a>	<a href="#">Bidder full Responsibility</a>	46
<a href="#">2.072</a>	<a href="#">State Consent to delegation</a>	46
<a href="#">2.073</a>	<a href="#">Subcontractor bound to Contract</a>	46
<a href="#">2.074</a>	<a href="#">Flow Down</a>	47
<a href="#">2.075</a>	<a href="#">Competitive Selection</a>	47
<b><a href="#">2.080</a></b>	<b><a href="#">State Responsibilities</a></b>	<b>47</b>
<a href="#">2.081</a>	<a href="#">Equipment</a>	47
<a href="#">2.082</a>	<a href="#">Facilities</a>	47
<b><a href="#">2.090</a></b>	<b><a href="#">Security</a></b>	<b>47</b>
<a href="#">2.091</a>	<a href="#">Background Checks</a>	47
<b><a href="#">2.100</a></b>	<b><a href="#">Reserved</a></b>	<b>47</b>
<b><a href="#">2.110</a></b>	<b><a href="#">Records and Inspections</a></b>	<b>47</b>
<a href="#">2.111</a>	<a href="#">Inspection of Work Performed</a>	47
<a href="#">2.112</a>	<a href="#">Retention of Records</a>	48
<a href="#">2.113</a>	<a href="#">Examination of Records</a>	48
<a href="#">2.114</a>	<a href="#">Audit Resolution</a>	48
<a href="#">2.115</a>	<a href="#">Errors</a>	48
<b><a href="#">2.120</a></b>	<b><a href="#">Warranty</a></b>	<b>48</b>
<a href="#">2.121</a>	<a href="#">Warranties and Representations</a>	48
<a href="#">2.122</a>	<a href="#">Conflict of interest &amp; business ethics</a>	49
<a href="#">2.123</a>	<a href="#">Reserved</a>	50
<a href="#">2.124</a>	<a href="#">Reserved</a>	50



2.125	<a href="#">Reserved</a>	50
2.126	<a href="#">Reserved</a>	50
2.127	<a href="#">Reserved</a>	50
2.128	<a href="#">Reserved</a>	50
<b>2.130</b>	<b><a href="#">Insurance</a></b>	<b>50</b>
2.131	<a href="#">Liability Insurance</a>	50
2.132	<a href="#">Subcontractor Insurance Coverage</a>	52
2.133	<a href="#">Certificates of Insurance</a>	52
<b>2.140</b>	<b><a href="#">Indemnification</a></b>	<b>52</b>
2.141	<a href="#">General Indemnification</a>	52
2.142	<a href="#">Code Indemnification</a>	52
2.143	<a href="#">Employee Indemnification</a>	52
2.144	<a href="#">Patent/Copyright Infringement Indemnification</a>	53
2.145	<a href="#">Continuation of Indemnification Obligations</a>	53
2.146	<a href="#">Indemnification Procedures</a>	53
<b>2.150</b>	<b><a href="#">Termination/Cancellation</a></b>	<b>54</b>
2.151	<a href="#">Notice and Right to Cure</a>	54
2.152	<a href="#">Termination for Cause</a>	54
2.153	<a href="#">Termination for Convenience</a>	55
2.154	<a href="#">Termination for Non-Appropriation</a>	55
2.155	<a href="#">Termination for Criminal Conviction</a>	55
2.156	<a href="#">Termination for Approvals Rescinded</a>	55
2.157	<a href="#">Rights and Obligations upon Termination</a>	56
2.158	<a href="#">Reservation of Rights</a>	56
<b>2.160</b>	<b><a href="#">Termination by Bidder</a></b>	<b>56</b>
2.161	<a href="#">Termination by Bidder</a>	56
<b>2.170</b>	<b><a href="#">Transition Responsibilities</a></b>	<b>56</b>
2.171	<a href="#">Contractor Transition Responsibilities</a>	56
2.172	<a href="#">Reserved Contractor Personnel Transition</a>	57
2.173	<a href="#">Reserved Contractor Information Transition</a>	57
2.174	<a href="#">Reserved</a>	57
2.175	<a href="#">Reserved Transition Payments</a>	57
2.176	<a href="#">Reserved</a>	57
<b>2.180</b>	<b><a href="#">Stop Work</a></b>	<b>57</b>
2.181	<a href="#">Stop Work Orders</a>	57
2.182	<a href="#">Cancellation or Expiration of Stop Work Order</a>	57
2.183	<a href="#">Allowance of Bidder Costs</a>	58
<b>2.190</b>	<b><a href="#">Dispute Resolution</a></b>	<b>58</b>
2.191	<a href="#">In General</a>	58
2.192	<a href="#">Informal Dispute Resolution</a>	58
2.193	<a href="#">Injunctive Relief</a>	59
2.194	<a href="#">Continued Performance</a>	59
<b>2.200</b>	<b><a href="#">Federal and State Contract Requirements</a></b>	<b>59</b>
2.201	<a href="#">Nondiscrimination</a>	59
2.202	<a href="#">Unfair Labor Practices</a>	59
2.203	<a href="#">Workplace Safety and Discriminatory Harassment</a>	59
2.204	<a href="#">Reserved</a>	59
<b>2.210</b>	<b><a href="#">Governing Law</a></b>	<b>59</b>
2.211	<a href="#">Governing Law</a>	59
2.212	<a href="#">Compliance with Laws</a>	60
2.213	<a href="#">Jurisdiction</a>	60
<b>2.220</b>	<b><a href="#">Limitation of Liability</a></b>	<b>60</b>
2.221	<a href="#">Limitation of Liability</a>	60
<b>2.230</b>	<b><a href="#">Disclosure Responsibilities</a></b>	<b>60</b>
2.231	<a href="#">Disclosure of Litigation</a>	60
2.232	<a href="#">Reserved</a>	61
2.233	<a href="#">Bankruptcy</a>	61



<b><u>2.240</u></b>	<b><u>Performance</u></b>	<b>61</b>
	<u>2.241</u> <u>Time of Performance</u>	61
	<u>2.242</u> <u>Reserved</u>	62
	<u>2.243</u> <u>RESERVED</u>	62
	<u>2.244</u> <u>Excusable Failure</u>	62
<b><u>2.250</u></b>	<b><u>Reserved</u></b>	<b>63</b>
	<u>2.251</u> <u>Reserved</u>	63
	<u>2.252</u> <u>Reserved</u>	63
	<u>2.253</u> <u>Approval of Deliverables, In General</u>	63
	<u>2.254</u> <u>Reserved Process for Approval of Written Deliverables</u>	63
	<u>2.255</u> <u>Reserved</u>	63
	<u>2.256</u> <u>Reserved</u>	63
<b><u>2.260</u></b>	<b><u>Ownership</u></b>	<b>63</b>
	<u>2.261</u> <u>Ownership of Work Product by State; License to Bidder</u>	64
	<u>2.262</u> <u>Vesting of Rights</u>	64
	<u>2.263</u> <u>Rights in Data</u>	64
	<u>2.264</u> <u>Ownership of Materials</u>	64
<b><u>2.270</u></b>	<b><u>State Standards</u></b>	<b>65</b>
	<u>2.271</u> <u>Existing Technology Standards</u>	65
	<u>2.272</u> <u>Acceptable Use Policy</u>	65
	<u>2.273</u> <u>Systems Changes</u>	65
	<u>2.274</u> <u>Electronic Receipt Processing Standard</u>	65
<b><u>2.280</u></b>	<b><u>Reserved</u></b>	<b>65</b>
	<u>2.281</u> <u>RESERVED</u>	65
<b><u>2.290</u></b>	<b><u>Environmental Provision</u></b>	<b>65</b>
	<u>2.291</u> <u>Environmental Provision</u>	65
<b><u>Glossary</u></b>		<b>71</b>



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

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

This is a Contract for the Michigan Department of Technology Management and Budget. The Agency is requesting a third-party, independent professional-services firm to conduct a thorough Enterprise Risk Assessment, in accordance with all applicable Federal Information Processing Standards (FIPS), National Institute of Standards and Technology (NIST) standards, Internal Revenue Service (IRS) Standard 1075, Criminal Justice Information Services(CJIS) standards, as well as State and industry information processing security policies and standards in order to secure and transform the State of Michigan IT enterprise.

The desired end-state of the agency is to deliver optimized, secure services that satisfy our agency clients and their need for quality and speed of delivery of security services. Risks shall be managed in a manner that is both cost-effective and empowering to our agency clients.

#### **1.002 BACKGROUND**

Governor Rick Snyder's administration and his drive to energize Michigan's lagging economy and reshape state government officially began in January 2011. This assessment and resulting improvements in security technology will contribute to the reinvention of Michigan to become a stronger, more vibrant state.

- When the Office of Enterprise Security (OES) was formed in 2002, an in-house quick risk assessment was conducted.
- In 2005, OES conducted a penetration test of the state's network.
- In 2010, 2011, 2012, 2013 a penetration test was done on in-scope Payment Card Industry (PCI) Systems.
- The final Gartner "Information, Communication, and Technology (ICT) Study" recommendation in 2012 noted that a comprehensive enterprise-wide risk assessment that identifies the top five to ten risks for the State has not been done. The last agency-wide risk assessment was completed nine years ago and has not been updated.
- Since 2002, the number of internet-facing applications has increased, a number of new technologies have been implemented, and the threat of compromise to confidential systems via the Internet has increased greatly.
- Our cyber security resources have been forced to expend their protection efforts on discrete systems, rather than broad solutions that are of critical significance to agency business and are high-value targets for attackers.
- We are currently implementing Governor Snyder's Cyber Initiatives which was released October 2011. This Enterprise Risk Assessment project is complementary to those initiatives and will strive to provide the State with the confidentiality, integrity, and availability expected by its citizens.

### **1.100 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The Contractor shall review, assess, evaluate and make recommendations for improvement for identified security-related services which are procured, deployed, maintained, and operated by State of Michigan. Beginning with the identification of a baseline of security operations and environment, the assessment will identify specific areas of risk, architecture, processes and procedures where strategic and operational security changes will result in efficiencies and service improvements for DTMB, its customer agencies, and the State of Michigan. The categories of focus are as follows:



- 1) Technology
  - a) Architecture assessment / technical redesign – assess the network and any vulnerability that may allow access to sensitive data, including communication channels and protocols, as well as any simplification opportunities while maintaining security and data protection as the priority.
  - b) Penetration testing – assess five sensitive data systems based on SOM selection.
  - c) Asset configuration reviews - Server environment, network device environment, end user computing environments: review images and methods based on industry best practices.
  - d) Cloud environment – review current cloud utilization environment security and recommend strategy for future cloud direction.
  
- 2) Process and Capabilities
  - a) Alignment of DTMB policies / procedures / architecture with applicable Federal, State, industry requirements and best practices. Review framework of security policies, standards, and procedures for comprehensiveness and effectiveness.
  - b) Log management – Review log management process for proper utilization and security.
  - c) Access Control and Authentication (including Physical Security and Remote Access)
  - d) Data Classification, Transmission, Sanitization, and Disposal (including Record Retention) – review these aspects based on sensitive data.
  - e) Ongoing Security Assessment Strategies – recommend any additional assessments that should be performed or changes to current assessment process and strategies.
  - f) Budgeting – review security budget amounts and processes based on industry best practices and levels.
  - g) Accountability and Performance – review security process and procedures for comprehensiveness and effectiveness.
  - h) Software Development Life Cycle (SDLC) security practices, to include robust quality assurance – review SUITE methodology for secure practices.
  - i) Risk Management, Disaster Recovery, and Business Continuity – review DR/BCP systems for comprehensiveness and effectiveness.
  
- 3) People and Organization
  - a) Alignment of security organizational design with IT service management best practices
  - b) Security Awareness Program Enhancement
  - c) Critical Incident Response Program Enhancement

### **1.102 OUT OF SCOPE**

The Contractor should not expect to review systems and locations that are not in the Lansing metropolitan area or systems that have hardware not located in one of the State of Michigan data centers:

- 1) Locations outside of Lansing Metropolitan Area Network.
- 2) Contractor hosted application sites – some systems are hosted by Contractors or in other states around the country
- 3) Hardware – the hardware Contractor or brands are not to be evaluated by this assessment
- 4) Physical Security – building security systems for any SOM owned or leased buildings are not to be assessed.

### **1.103 ENVIRONMENT**

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

Contractor is to conform to State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

**Enterprise IT Policies, Standards and Procedures:**

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

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

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

**Enterprise IT Security Policy and Procedures:**

[http://www.michigan.gov/documents/dmb/1310\\_183772\\_7.pdf](http://www.michigan.gov/documents/dmb/1310_183772_7.pdf)

[http://www.michigan.gov/documents/dmb/1310.02\\_183775\\_7.pdf](http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf)

[http://www.michigan.gov/documents/dmb/1325\\_193160\\_7.pdf](http://www.michigan.gov/documents/dmb/1325_193160_7.pdf)

[http://www.michigan.gov/documents/dmb/1335\\_193161\\_7.pdf](http://www.michigan.gov/documents/dmb/1335_193161_7.pdf)

[http://www.michigan.gov/documents/dmb/1340\\_193162\\_7.pdf](http://www.michigan.gov/documents/dmb/1340_193162_7.pdf)

[http://www.michigan.gov/documents/dmb/1350.10\\_184594\\_7.pdf](http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf)

**The State's security environment includes:**

MDTMB Single Login.

MDTMB provided SQL security database.

Secured Socket Layers.

SecureID (State Security Standard for external network access and high risk Web systems)

**IT e-Michigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/som/Look\\_and\\_Feel\\_Standards\\_302051\\_7.pdf](http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf)

**The State Unified Information Technology Environment (SUITE):**

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

**1.104 Work and Deliverable****I. Services and Deliverables to Be Provided**

One of the project with Parties agreeing that the goal is to complete Phase 1 within four (4) months and no longer than six (6) months from start of contract. Contractor must be able to commit to providing resources for the completion of, at minimum, Phase 1, Phase 2 and Phase 3.

During the life of the contract the Contractor project manager shall meet with SOM project manager and submit;

- Monthly written performance and progress reports identifying:
  - Tasks completed
  - Issues
  - Schedule status
  - Corrective action plans if necessary



Contractor shall address each of the three following subject areas (People, Process, and Technology) for each sub-sections of Section A (1 through 7):

**Technology**

- Information gathering – obtain detailed diagram of network and its security profile.
- Network Architecture – assess the network and any vulnerability that may allow access to sensitive data, including communication channels and protocols.
- Network Architecture – assess the network for any simplification opportunities while maintaining security and data protection as the priority.
- Vulnerability Scans – identify vulnerabilities of network devices (firewalls, DNS, routers, etc.) as well as servers within the confines of the State’s data centers.
- Network Configurations – review /evaluate network device configurations based on industry best practice.
- Wireless – review / evaluate wireless system architecture for weaknesses and recommend best environment security.
- VPN – review / evaluate VPN architecture for weaknesses and recommend changes based on industry best practice.
- Virtual Environment – review / evaluate network and configurations based on industry best practice.
- Specific Application Security
  - External Pen Test – sensitive data systems (selected systems)
  - Internal Pen Test – sensitive data systems (selected systems)
  - Web App Pen Test – sensitive data systems (selected systems)
- Asset configuration reviews - Server environment, network device environment, end user computing environments: review images and methods based on industry best practices.
- Source Code Security Assessment – review representative systems for common issues (SQL injection, cross site scripting, buffer overflows, weak authentication, etc.) (selected systems)

**Process and Capabilities**

- Security Framework – review framework of security policies, standards, and procedures for comprehensiveness and effectiveness.
- Access Control and Authentication
- Application Development – review software development methodology for secure practices and quality assurance.

**People**

- Physical Security - Data center locations in Lansing area
- Security Training – Awareness program enhancement
- Organization – review for best alignment for customer security service delivery

**A. Business Requirements**

**Phase One – To be completed within 6 months of Contract Award**

**1.) Evaluation of the Current Environment**

**Deliverable(s)**

The Contractor will perform the following:

- a) Review and assess DTMB’s current security services and related operations, including governance, cost, budget, funding, efficiency and customer service.



- b) Evaluate the structure and governance of the current security environment, the framework of security policies for comprehensiveness and effectiveness, whether sufficient funding exists, the ability of this structure to support agency customers today and into the future, as well as statewide and multi-agency activities.
- c) Evaluate DTMB's delivery of security services against other public and private sector organizations, including benchmarking of cost, services and identification of any gaps based on State and Federal regulations such as PCI, HIPAA, Encryption, FTI, FERPA, CJIS, NIST, FIPS, etc.
- d) Evaluate how well the current organizational structure and overall staffing meets SOM strategic security goals.
- e) Assess security's integration into the software development methodology (SUITE).
- f) Assess network security and survivability.
- g) Assess strengths and weaknesses within the SOM's security program based on industry best practices for confidentiality, integrity, availability, and zone architecture.
- h) Identify top ten SOM network vulnerabilities visible internally and externally
- i) Provide enhanced in-depth analysis in the following four areas of Security;
  - 1) Policy (framework, comprehensiveness, enforcement)
  - 2) Process (SDLC – SUITE)
  - 3) Organization (size, roles, responsibilities, and authority)
  - 4) Architecture (zones, new technology implementation)

Note: Contractor will document their Risk Assessment methodology dangers within the execution of their assessment.

Acceptance Criteria: The state will accept a free-standing fully-documented, narrative report which includes assessment and analysis as well as a summary presentation. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be substantially met.

Contractor will utilize methodology as documented below but with the understanding that any conflicting requirements, deliverables, actions, or methodology from the State's original requirements must be approved in writing by SOM Project Manager.

- The Plan stage is addressed in section 1.400, Project Management
- The Analyze stage is described in section 1, Evaluation of the Current Environment, section 2, Evaluation of the State's Security Needs, section 3, Identification of Security, Services and Technology Opportunities, and section 4, Maturity and Gap Analysis
- The Recommend stage is described in section 5, Recommendations for Security Model and Technology Solution Alternatives – Based on Results of Deliverables 1 through 4
- The Present stage is described in section 1.104 B, Documentation

DTMB requires that Phase 1 be completed within six (6) months of the contract start. Contractor will complete the work in two work streams as depicted in Figure 2 below and described in the subsequent sections. Parties agree that the goal is to complete Phase 1 within four (4) months and no longer than six (6) months.

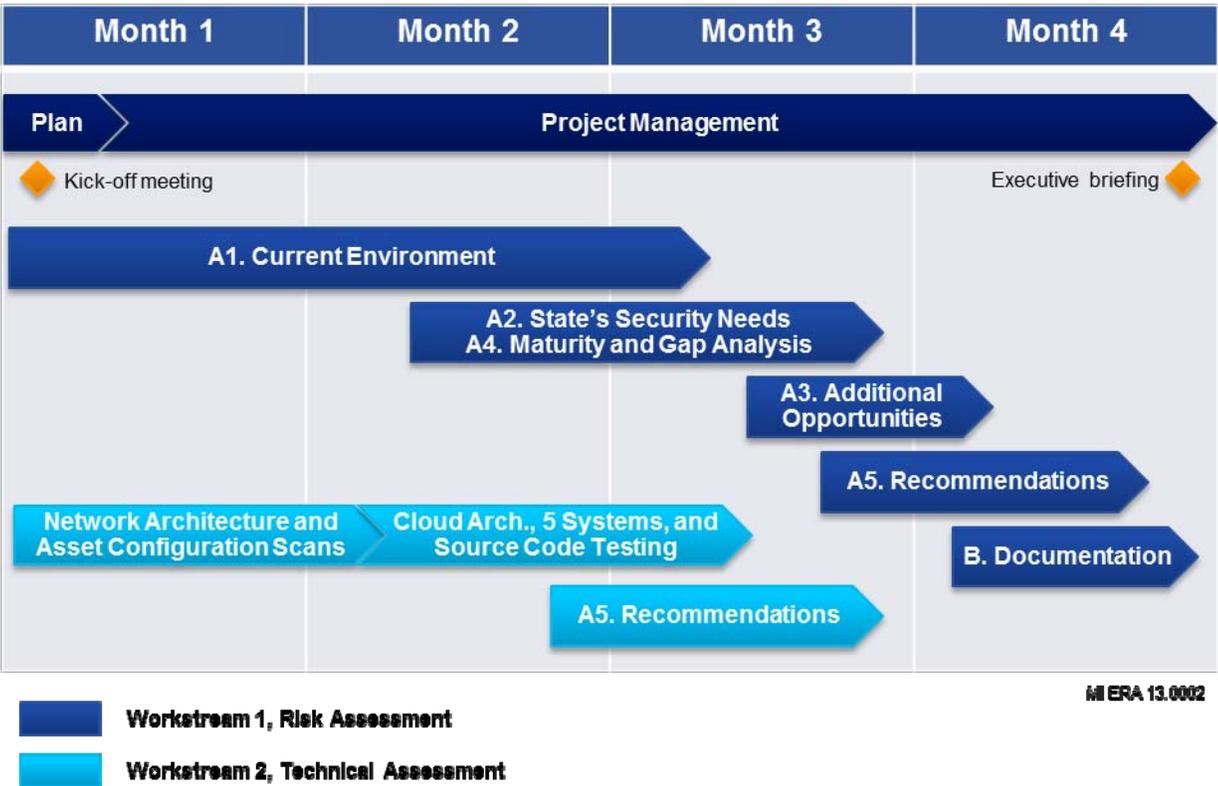


Figure 2: Timeline and Workstreams for Phase 1

**Evaluation of the Current Environment**

The subsections below describe the tasks, objectives, and outcomes for the Evaluation of the Current Environment activity, by workstream. This activity is numbered A1 in Figure 2 above.

**Workstream 1, Risk Assessment**

Contractor uses an iterative approach to conducting security and risk assessments. Contractor begins by running our proprietary Security Controls and Requirements Assessment Builder (SCARAB) tool (described below) to identify security controls that are relevant to the State. SCARAB produces a list of normalized security controls from in-scope security standards and regulations such as PCI, HIPAA, NIST, ISO, CJIS, FIPS, FISMA, and others, which form the basis for a security framework.

After SCARAB identifies in-scope standards and regulations, it normalizes the similar controls across standards and regulations to the "lowest common denominator" for each control type. The normalized output is verified by the Contractor's team for relevance and consistency.

Contractor will compare the SCARAB output with the State's existing security framework to confirm that it has accounted for the necessary controls. If the framework established by SCARAB is more comprehensive than the State's existing framework, Contractor will document the findings and use the SCARAB output as the basis for the assessment to provide a more complete result to the State.

Once Contractor has established the security framework, Contractor will review up to 30 security documents, consisting of a combination of security policies, standards, procedures, training materials, and technical system documents (details about the technical testing documents are provided in the Workstream 2 section below). Contractor will spend up to 40 hours reviewing the SUITE methodology as it applies to



SDLC processes. The objective of this review is to determine whether or not the documentation adequately aligns with the security framework. As the Contractor identifies gaps in the documentation, the Contractor will document them in the Current Environment document. The Contractor will begin to develop recommendations for remediating those gaps, as described later.

After developing a firm understanding of the State's documentation, Contractor will proceed to interview key State stakeholders. Contractor will conduct up to 30 interviews, either with individuals or small groups. During project start-up, the Contractor will work with the State Executive Sponsor to identify the complete list interviewees. Contractor will speak with a cross-section of stakeholders, with knowledge of areas such as security, network, cloud, and business personnel with security responsibilities. Contractor expects stakeholders to be fairly senior in their roles (e.g., CISO, Risk Management lead, department heads) so they can answer Contractor's strategic questions, but some of the interviews are more technical in nature (e.g., to understand audit log management and identity management practices), requiring stakeholders with engineering, system/network administration, and/or operations knowledge (details about the technical interviews are provided in the Workstream 2 section below), as well as at least one individual with knowledge of datacenter physical security practices. One group interview that the Contractor would conduct would be with a focus group of Project Managers from a variety of in-flight State projects to gain an understanding of how well the security controls documented in SUITE are applied on actual projects. Contractor will require assistance from the State-assigned Project Manager to help identify the appropriate interviewees and schedule the interviews.

Contractor will use models as an input to determine if DTMB's staffing structure and organizational model are appropriate to its size, complexity, and security objectives. Contractor will document the current state and identify any gaps that may be found. Contractor will obtain DTMB's security budget as a percentage of its overall annual IT budget, and compare that with industry standards to determine if DTMB's budget allocation for security is adequate.

### **Workstream 2 Technical Assessment**

As part of Workstream 2 the Contractor will assess DTMB's technology (i.e., the network and overall security architecture and technologies) by conducting point-in-time architectural assessments, vulnerability scans, penetration tests, and configuration assessments on selected DTMB systems as mutually agreed, to develop a perspective of DTMB's risk posture and accordance with industry standard and DTMB specific IT security practices.

As part of deliverable A1, and as depicted above, the team would conduct the assessment activities as described in following sub-sections. To provide the State with a cost-effective yet informative solution, we would scan a representative sample of the State's assets as described in the sub-sections below.

All assessments are executed under the supervision of State stakeholders. Contractor will coordinate assessment times with the State to avoid periods when systems are offline for maintenance, and critical business uptimes and network usage. If the Contractor finds and verifies vulnerabilities identified as Critical or High, the Contractor will immediately notify the State so it can take corrective action in advance of Contractor's complete report, if desired.

Contractor will depend on assistance from State system and network administrators to complete assessment activities. State administrators will need to allow Contractor scanning technologies to operate, guide Contractor in identifying appropriate scanning windows, and assist Contractor with potential connectivity, accessibility, and bandwidth issues.



## Weeks 1-5, Architecture Design and Network Device Security Configuration

### Network Architecture Design Assessment

Contractor will work with DTMB networking personnel to obtain available network documentation, diagrams, design principles, standards and guidelines to perform a high-level network architecture design assessment. As described in the Workstream 1 section above, Contractor will assess relevant documentation and interview DTMB networking personnel Contractor will assess the following as part of this task:

- Network design & placement of security devices
- Network entry points, traffic flow and network segmentation
- Availability and redundancy
- Network visibility

Contractor will work with DTMB to identify an appropriate risk-based sample of up to five (5) firewalls, up to five (5) routers, and one (1) VPN device.

The objective of the testing is to identify potential vulnerabilities, misconfigurations, and general security weaknesses in the configuration of the selected network devices. Using manual analysis techniques and interviews with network administrators, Contractor will compare the current security configurations with industry standard security configuration standards. For each network device, Contractor will assess the following:

- Rules, access control lists and policies
- Auditing, logging and monitoring
- Fault tolerance, backup and recovery
- Maintenance and operations
- Password management
- System configurations
- Administration

Contractor will select an appropriate risk-based sample size (between 5% - 10% of the server population) of each in-scope system to identify each system's functionality and business criticality classification. At a minimum, Contractor testing consists of the below activities:

- **Authenticated Server Security Configuration Scanning:** identify misconfigurations and general security weaknesses in the configuration of the selected in-scope system. Using a commercial automated compliance tool, compare the current security configurations to Center for Internet Security (CIS) "hardening" standards. Specifically, the server security configuration assessment attempts to identify security weaknesses in the following areas:
  - Patch Levels
  - User and Group Membership
  - Local Password Policy Settings



- Local User and Group Management
- Registry-Related Security Settings
- File and Registry Permissions
- Share Configuration and Permissions
- User Rights
- Active Services
- Services Enabled
- Auditing and Logging Settings
- **Authenticated Vulnerability Scanning:** perform automated vulnerability scanning, at a point in time, using a commercial tool to search for any one of the thousands of well-known vulnerabilities that are present on systems within the in-scope IP addresses. Specifically, the vulnerability scanning attempts to identify security weaknesses in the following areas:
  - Operating Systems (i.e., Windows, Unix, etc.)
  - Network Devices (i.e., Routers, Firewalls, etc.)
  - Databases (i.e., Oracle, SQL Server, MySQL, DB2)
  - Web Servers (i.e., IIS, Apache, HTTP, HTTPS, etc.)
  - Web Applications (i.e., SQL Injection, Cross Site Scripting, etc.)
  - Services (i.e., FTP, RPC, SMTP, SNMP, DNS, Remote Administration, etc.)
  - Missing Security Patches & Misconfigurations
  - Backdoors and Denial of Service Detection

### Wireless Security Assessment

Contractor testing consists of the below activities:

- **Interview:** Contractor will work with the appropriate DTMB personnel to understand the deployment of the wireless network currently in place. Considerations include the complexity of the wireless network, inventory of access points, authentication methods used, client configurations and other information relevant to the environment.
- **Footprinting & Target Identification:** Contractor will perform wireless walkthroughs of one (1) DTMB office location to identify wireless access points, profile high-level security controls such as available encryption mechanisms, and attempt to identify rogue wireless access points that are connected to the DTMB internal network without a business need.
- **Intrusion:** Contractor will actively try to intrude/penetrate the Wi-Fi perimeter using a “path of least resistance” methodology in order to obtain unauthorized access to the exposed wireless networks. If the intrusion succeeds, Contractor will keep notes and records and liaise with State personnel to confirm the specific network segment(s) that were exposed, and plan further test activities if necessary.
- **Testing:** see Network Architecture Design and Network Device Security Configuration testing description.



## End-User PC Security Assessment

Contractor's End-User PC Security Assessment will assess each unique PC image in scope, up to five (5) total images. In addition to the activities listed previously, Contractor's testing consists of the below activities:

**Intrusion:** perform penetration testing against a newly imaged PC from the context of a valid employee with credentials to the PC. Specifically, Contractor will assess the PC using the following activities:

- Analyze the local file and directory structure to identify script files that may have been used to configure and deploy the newly imaged PC for weaknesses such as hard coded credentials
  - Enumerate local password files and attempt to crack them to determine if administrative access can be obtained to the local PC and determine if shared usernames and passwords lead to unauthorized access to DTMB's Windows domain
  - Enumerate sensitive information such as administrative usernames and passwords from local cache and memory to determine if unauthorized access is achievable to the DTMB's Windows domain.
- **Testing:** see Network Architecture Design and Network Device Security Configuration testing description

### **Weeks 6-9: Cloud Architecture, Five Critical Systems, and Source Code**

#### **External & Internal Penetration Testing of Selected Sensitive Data Systems will include:**

- **Reconnaissance:** Contractor will identify, through publicly available sources, an inventory of anticipated targets by mapping out the client environment and running system services.
- **Identify Vulnerabilities & Misconfigurations:** Contractor will identify existing vulnerabilities and misconfigurations using manual (80% of effort) skill-based and automated (20% of effort) techniques. Develop anticipated attack vectors to be used to obtain unauthorized access.
- **Intrusion:** Contractor will exploit identified vulnerabilities and misconfigurations to obtain unauthorized access to the infrastructure, using the techniques listed below. Leverage compromised systems to obtain access to other trusted systems.
  - Point of Attack: External, Internal, Wireless, Physical, Web Application, Modem, Social
  - Threat Model: Outsider (No Knowledge), Insider/Employee (General Knowledge)
  - Perspective: One/Multiple Location, Domestic/International, Field Offices, Business Units
  - Iterative Approach: Gain Access, Identify the System, Escalate Privileges, Obtain and Crack Passwords, Identify New Targets
- **Obtain Trophies:** Contractor will capture administrative access to the DTMB domain, passwords, and/or sensitive information such as social security numbers.

External Penetration Testing is initiated from Contractor's TVM Lab in Sterling, VA. Contractor will coordinate external testing with State operations personnel, providing source IP addresses for Contractor's scanners so that State personnel can disable or ignore alerts from those addresses during scanning activities.

#### **Web Application Penetration Testing of Selective Sensitive Data Systems**

At a minimum, Contractor testing will consist of the below activities:



- **Assess and Model Threats:** perform the assessment first using a “black box” approach (no credentials) followed by a “white box” approach (with valid user-level credentials).
- **Survey Testing:** enumerate information about the web app to further understand its functionality and construct the initial attack path by crawling through each web page, analyze the HTTP responses, track the URL paths, attempt to evoke error messages and perform search engine hacking.
- **Intrusion Testing:** attempt to identify and exploit vulnerabilities identified through manual investigation (80% of effort) and automated scanning (20% of effort) performed during the Survey Testing phase. Specifically, assesses the target web application for the following types of vulnerabilities:
  - Configuration Management Testing: misconfigurations in the infrastructure, web application, administrative interfaces, web server, operating system and backend systems.
  - Authentication Testing: lack of encryption, username enumeration, easily guessable passwords, authentication bypassing, use of a CAPTCHA and weak password reset functionality.
  - Session Management Testing: bypassing session management, fixed session ID’s, exposed session information and cross-site request forgery.
  - Authorization Testing: path traversal, privilege escalation and bypassing authorization schemes.
  - Business Logic Testing: bypassing or manipulating the application’s intended business logic.
  - Data Validation Testing: cross-site scripting, SQL injection, code injection and OS command execution.

### **Source Code Security Assessment**

Source code scanning will be performed with automated tools, with false positive analysis for Critical and High vulnerabilities identified. At a minimum, Contractor will perform the activities below:

The source code assessment process is as follows:

- Perform automated source code scanning
- Analyze identified weaknesses.
- Identify false-positives for removal.
- Perform manual advanced analysis of the source code to identify additional weaknesses.
- Combine automated and manual findings.

Once the scan is complete Contractor will conduct a defect analysis of the scan results and checklist responses to identify genuine and false positive vulnerabilities. The results are aligned to risks and Contractor will document the mitigation controls for each genuine vulnerability. Prioritization will be completed for each of the vulnerabilities based on the risk and likelihood of exploitation.

### **Current Environment Deliverable**



Contractor will document the Current Environment deliverable. Contractor will create Current Environment document in Microsoft Word, with multiple sections that align with the security framework Contractor established. Included in this document are:

- A detailed description of DTMB's current governance model, a high-level overview of how much it is spending on security and how that compares with published industry averages, a description of currently available training materials (format, quality, how well they promote a culture of risk awareness) and how they are delivered, and the general perception of DTMB's ability to serve its customers based on interview results.
- DTMB's current security environment: what technologies are in place, how the network is structured, overall security architecture, and what vulnerabilities currently exist, based on Workstream 2 scanning and testing results.
- Detailed explanation of the completeness of security policies and standards as compared with the security framework (i.e., are all controls in the security framework appropriately addressed in the policies and standard; if not, Contractor will describe what is missing), and the current state of implementation/enforcement of policies and standards based on scan findings and interview results.
- Comparison of DTMB with its peers, based on industry analyst reports and anecdotal Contractor experience with many clients of similar size and complexity, including other States and private sector organizations.
- Current organizational structure and overall staffing: an explanation of the staff's ability to cope with the workload from a bandwidth and skills perspective, based on interview findings and comparison with organizational models.
- Security's integration into the software development methodology (SUITE): a detailed description of how well the SUITE methodology addresses security as compared with the security framework, and how well it is enforced based on interviewing active State Project Managers.
- Network security and survivability: a description of our findings based on interviews and scan results.

As part of the Current Environment deliverable, Contractor will:

- Indicate the strengths and weaknesses within each scope area and section as compared with the security framework.
- Identify top ten SOM network vulnerabilities visible internally and externally, as identified from Contractor's scans. Contractor will provide top ten based on criticality and/or frequency of occurrence.

## 2.) Evaluation of State's Security Needs

The Contractor will perform the following:

- a) Identify current security needs and evaluate future security needs and priorities, at both the agency-specific and statewide level.
- b) Evaluate how well the current technology environment supports agency-specific and statewide security goals.
- c) Evaluate the key factors driving DTMB security investment decisions and how well the current environment ensures that investments support executive office, agency-specific and statewide security objectives.



Acceptance Criteria: The state will accept a free-standing fully-documented, narrative report which includes assessment and analysis as well as a summary presentation. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be met.

### **State's Security Needs Deliverable**

Contractor will determine gaps in the State's people, processes, capabilities, and technologies with respect to the State's current and future needs. Contractor will identify the State's needs based on industry standards, regulatory requirements, and alignment with the State's current and future business objectives as identified during stakeholder interviews.

The State's Security Needs deliverable is a Microsoft Word document that has the same sections as the Current Environment deliverable, for easy traceability. For each section describing the as-is state in the Current Environment deliverable, there is an equivalent section in the State's Security Needs document that explains what else is required for that security area to meet the State's security requirements. Contractor will provide findings as a documented list with an explanation of each finding, a graphical representation of the severity of the findings with respect to risk and magnitude of the gap, and a "radar graph" showing the current state and projected improvement over time.

Contractor's findings will be framed against the key drivers that are important to the State, such as:

- Improving regulatory compliance without increasing (or if possible decreasing) the cost of compliance.
- Enhancing security effectiveness to reduce the total cost of ownership for security.
- Improving the speed and quality of customer service to citizens.
- Improving citizen data protection and privacy.
- Providing single sign-on (SSO) and other self-service capabilities to citizens and providers.
- Presenting a unified eGovernment capability for citizens and providers alike

### **3.) Identification of Security, Services and Technology Opportunities**

The Contractor will perform the following:

- a) Identify what other opportunities may exist to improve the State's security services and technology capabilities.
- b) Review factors to be considered when expanding security services.
- c) Identify opportunities to advance technology and security process integration, partnerships and performance management to generate savings and operational efficiencies.
- d) Outline the short-term and long-term impacts of changing security services along with the operational efficiencies and savings expected to result.
- e) Identify opportunities for and challenges to adjusting existing security organizational structures with sections on the four enhanced analysis areas in Deliverable 1.

Acceptance Criteria: The state will accept a fully-documented, free-standing narrative report which includes assessment as well as a summary presentation of the analysis and potential opportunities. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be met.



### **Additional Opportunities Deliverable**

Contractor will identify additional opportunities for the State to explore to further enhance its current security posture with respect to Policy, Process, Organization, and Architecture. For each category, Contractor will provide the following information:

- Description of net new items Contractor recommends adding (e.g., new policies, new processes, new roles in the organization, new technologies).
- Description of changes Contractor recommends making to existing items (e.g., policy/technology modifications; process streamlining or re-engineering; organizational changes)
- Description of existing items Contractor recommends removing (e.g., consolidating two overlapping processes into one; removing an obsolete technology in favor of a new one).
- Explanation of the anticipated impact of each recommendation (e.g., anticipated implementation effort, estimated cost reduction due to efficiency gain).
- Recommended timing for the opportunity (e.g., to align with a specific business initiative or identified dependency with other activities, such as a technology upgrade or larger personnel reorganization).

#### **4.) Maturity and Gap Analysis**

The Contractor will perform the following:

- a) Assess and describe the gap or difference between the current, 'as-is' status and the best practice opportunities and potential for Michigan's security services and environment.
- b) Identify and document the qualitative and quantitative difference in the categories outlined in Section A, item 1 and Section A, item 2 above, including at a minimum:
  - 1) Role and goals for security.
  - 2) Security and management models and alignment with business processes.
  - 3) Policies, strategies, and integration.
  - 4) Governance, organization design, staffing and skill composition.
  - 5) Security processes, services and technology capabilities with sections on four enhanced areas in Deliverable A Business Requirements.
  - 6) Security funding, staffing, and resources, including any savings or cost avoidance.
  - 7) Differences in performance and outcomes.

Acceptance Criteria: The State will accept a fully-documented, free-standing narrative Gap Analysis report as well as a summary presentation of the final report as an acceptable deliverable. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be met.

#### **Maturity and Gap Analysis Deliverable**

The deliverables described above in Sections 1 and 2 are inputs into the Maturity and Gap Analysis deliverable.

The Maturity and Gap Analysis deliverable is a Microsoft Word document that has the same sections as the Current Environment and State's Security Needs deliverables. For each capability domain, Contractor will take the current state as documented in the Current Environment document and the desired future state as documented in the State's Security Needs deliverable, and document the gap between the current state and desired end state, explaining the deficit and why it needs to be remediated.



Contractor's maturity model can be used again in Phase 3 to periodically re-measure the maturity level of each capability after remediation efforts have occurred, to demonstrate progress. Contractor's model must be highly repeatable, so that results are consistent and comparable over time, even if different personnel execute the assessment over time.

Contractor will provide anecdotal benchmarking information based on industry reports and Contractor's past experience with clients of similar size and complexity.

## **5.) Recommendations for Security Model and Technology Solution Alternatives – Based on Results of Deliverables 1 through 4**

The Contractor will perform the following:

- a) Develop recommendations for a security model including external relationships and partnerships.
- b) Formulate strategies for the expansion of security services, including recommendations for governance models, and examples of successful models from the public and private sector.
- c) Recommend options for security collaboration and sharing of technology and services between state and local governments, in support of executive office goals to reinvent Michigan.
- d) Identify specific advantages and any disadvantages of any proposed model, including implementation strategies, critical success factors, potential barriers to implementation, and a pricing and return on investment model.
- e) Show evidence of the success of the recommended model changes in other entities.
- f) Present findings to DTMB and advisors for a review and facilitate a discussion to determine next steps.

Acceptance Criteria: The state will accept a fully-documented, free-standing narrative report which includes data analysis as well as a summary presentation of the analysis and recommendations. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be met.

### **Recommendations Deliverable**

For each of the people, process, capability, and technology gaps and findings Contractor identified in the previous deliverables, including scan findings, Contractor will develop recommendations. Contractor will then group the recommendations to develop a cohesive security model. For the model - or where applicable, for individual or sub-groups of recommendations – Contractor will describe:

- Applicable external relationships and partnerships: for example, if a certain remediation activity requires involvement or assistance from the network engineering team, Contractor will identify this dependency.
- Strategies for the expansion of security services, such as recommendations for governance models, and examples of successful models from the public and private sector, based on the Contractor's past client experiences.
- Options for security collaboration and sharing of technology and services between state and local governments, in support of executive office goals to reinvent Michigan – Contractor will identify technological redundancies or opportunities for consolidation based on Contractor's interview findings and scan results.



- Advantages and possible disadvantages of the proposed model, including high-level implementation strategies, critical success factors, potential barriers to implementation, and a high-level pricing and return on investment model. Detailed implementation plans and estimates are provided in Phase 2.
- How the recommendations have been successful in other entities, based on the Contractor’s past client experiences.

Contractor and State will finalize the document formats within the first week of the project.

End of Phase One

Pursuant to its obligations described by Section 2.121, Accenture shall perform again any Services not in compliance with the warranty standards described therein and brought to its attention in writing within thirty (30) days after those Services are performed.

**Phase Two** – Phase Two is anticipated to commence after Phase One. The anticipated Scope of Phase Two is outlined in Item 6 below, but is subject to findings of Phase One. The Completion Date of Phase Two to be Determined and based upon the State’s desire to execute this Phase Two. Execution of Phase Two is at the sole discretion of the State. In the event the State wishes to proceed with Phase Two activities, the parties shall cooperate to determine the detailed scope for such Services in a separate document, to the extent that the determined scope is different than described below.

**6.) Roadmap to Implementation**

The Contractor will perform the following:

- a) Prepare an implementation action plan, based on the model and next steps agreed upon through Deliverable 5.
- b) Propose solutions to risks, vulnerabilities, and threats with both short-term and long-term solutions for remediation
- c) Prepare a remediation plan of the top ten enterprise risks as identified in the Enterprise Risk Assessment project above. This plan must include;
  - 1) Roadmap to accomplish remediation and implementation
  - 2) Resources required both Contractor and State of Michigan
  - 3) Estimated cost of implementing changes
  - 4) Impact on employees and customer agencies
  - 5) Risks of mitigation strategies
  - 6) Return on investment (if applicable)
  - 7) Communications Plan
  - 8) Change Management Plan
  - 9) Implementation Plan
  - 10) Project Plan with timelines and interdependencies
- d) Host a meeting with DTMB to present and review the plan

Acceptance Criteria: The state will accept a fully-documented, free-standing narrative report which includes data analysis as well as a summary presentation of the implementation action plan. In addition, the acceptance criteria for Deliverables listed in Section 1.501 must be met.



## Phase 2 Deliverables

The Contractor will develop a strategic roadmap which identifies a set of projects that should be executed to achieve the desired security state. The projects consist of logical groupings of recommendations and are sized to be consumable and implementable in a reasonable timeframe. The projects are also ordered in a Gantt chart format to show interdependencies amongst the projects and with possible external influences from other State initiatives. Factors Contractor will consider when determining the mapping of projects on the strategic roadmap are risk, cost, ease of implementation, and alignment with overall business strategy and programs.

Once the roadmap is developed, Contractor and State will mutually agree on the top ten (10) projects for implementation, based on the factors described above and any other considerations that the State deems relevant (e.g., budget, specific State-driven deadlines). Contractor will develop detailed Microsoft Project plans for the selected 10 projects that describe the following:

- Resources required of both the Contractor and State of Michigan, assuming that the Contractor would provide the majority of resources, with support from State personnel similar to Phase 1.
- Estimated cost of implementing changes, presented to the State in a mutually agreed format, using Contractor's standard pricing estimators.
- Timelines, tasks, and interdependencies between the tasks, or potential dependencies with other projects, as identified during stakeholder interviews (e.g., if a remediation activity involves a system that is scheduled for an upgrade, Contractor will schedule the remediation activity to begin after the upgrade is completed).

Associated with each MS Project plan, Contractor will create the following supporting documentation:

- Return on investment analysis (where applicable), for example, if a project results in removing duplication that allows staff to be re-allocated or take on additional workload, Contractor will identify this. Similarly, if a project creates automation that results in faster service delivery, Contractor will identify this as well.
- Impact on employees and customer agencies, for example, Contractor will identify if employees would require additional training to learn a new task or skill, or if there are new processes or the ability to provide service faster.
- Risks mitigation strategies, as described in section 1.402, Risk Management.
- Communications Plan: a plan that identifies the audience groups for each project, what communications each audience group requires (e.g., notifications, training, focus group participation), what the contents of each communication should be, and when communications should be delivered to meet project timelines.
- Change Management Plan: a plan that identifies changes required to the State environment to implement new technologies or capabilities, what change control activities are required to complete the implementation in a compliant manner, and the required timing of those activities to maintain project timelines.
- Implementation Plan: a plan describing the implementation process as applicable, such as required network modifications, server builds, database creation, and so on.



**Phase Three** – Phase Three is anticipated to commence after Phase Two. The anticipated Scope of Phase Three is outlined in Item 7 below, but is subject to findings of Phase Two. The Completion Date of Phase Three is to be Determined based upon the State’s desire to execute Phase Three. Execution of Phase Three is at the sole discretion of the State. In the event the State wishes to proceed with Phase Three activities, the parties shall cooperate to determine the detailed scope and pricing for such Services in a separate document.

**7.) Implementation**

The Contractor will perform the following:

- a. Implementation of the action plan in Phase Two, based on the model and next steps agreed upon through Deliverable 5.
- b. Provide resources required, manage risks, and resolve issues based on the action plan in Phase Two.
- c. Host a bi-weekly meeting with DTMB to review the implementation progress and issues.

End of Phase Three

**B. Documentation**

**a. Final Report Deliverable – Based on Results from Deliverables 1 through 7 (Phases 1, 2, and 3)**

The Contractor will perform the following:

- Provide a fully-documented, free-standing narrative report to include:
  - Recommendations – Overall project with specific sections on 4 enhanced areas in Deliverable 1, Top Ten Risks, and options.
  - Roadmap – Overall project and options
  - Business case
  - Risk assessment/benefits or value to DTMB and its agencies
  - Cost estimates of implementing changes.
  - Return on investment
- Recommendations/Summary presentation
- Communications plan
- Change Management Plan
- Present findings to DTMB and other key executives within the State of Michigan.
- Final Report Deliverable for Phase One: six months from start of contract.

Contractor will create an Executive Summary deliverable at the end of each phase of work that the Contractor will deliver. Contractor will prepare a PowerPoint presentation at the end of each Phase that summarizes the Phase:

- Overall approach and objectives.
- Timeline and how the Phase went according to the project plan.
- Major activities executed in the Phase, the purpose of each activity, the participants involved, and their roles.
- Description of results achieved in accordance with the Phase requirements (e.g., findings and recommendations in Phase 1; roadmap and plans in Phase 2; implementation activities in Phase 3).
- Summary of deliverables created, where they are posted, and a listing of State personnel that provided input, reviews, and approvals.
- "Looking forward" section (Phases 1 and 2 only) that describes how the Contractor sets the stage for the next Phase.



The presentation is delivered to State stakeholders at the end of each Phase as part of Phase closing activities.

### **1.200 Roles and Responsibilities**

#### **1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

##### **A. Contractor Staff**

The Contractor will provide resumes for those that will be assigned to the project indicating duties and responsibilities and qualifications to the Project Manager prior to the contract entering Phase 1 of the engagement for State of Michigan approval. The Contractor will commit that staff identified in its response to the State's project manager will actually perform the assigned work. If the identified personnel are currently assigned to a State project the Contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

Project Manager  
Security Risk Assessment Expert  
Single Point of Contact

**The Contractor will provide a Project Manager** to interact with the designated personnel from the State to insure a smooth transition to the new system. The project manager/technical lead will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager/technical lead responsibilities include, at a minimum:

Manage all defined Contractor responsibilities in this Scope of Services.  
Manage Contractor's Subcontractors, if any  
Develop the project plan and schedule, and update as needed  
Serve as the point person for all project issues  
Coordinate and oversee the day-to-day project activities of the project team  
Assess and report project feedback and status  
Escalate project issues, project risks, and other concerns  
Review all project deliverables and provide feedback  
Proactively propose/suggest options and alternatives for consideration  
Utilize change control procedures  
Prepare project documents and materials  
Manage and report on the project's budget

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

**The Contractor will provide a Security Risk Assessment Expert** with responsibilities that include, at a minimum:

- Manage all defined Contractor security risk assessment responsibilities in this Scope of Services.
- Develop assessment related project plans, timelines and recommendations



- Serve as the point person for all assessment related issues
- Coordinate and provide hands-on involvement in the day-to-day assessment activities
- Provide timely assessment task progress, feedback and status
- Resolve assessment / task related issues, assessment / task related risks, and other assessment / task related concerns
- Create all assessment deliverables. Review all assessment related deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Prepare project documents and materials
- The State reserves the right to require a change in the current Security Risk Assessment Expert if the assigned Security Risk Assessment Expert is not, in the opinion of the State, adequately serving the needs of the State.

**The Contractor will provide a Single Point of Contact** with responsibilities that include, at a minimum:

- Supporting the management of the Contract,
- Facilitating dispute resolution, and
- Advising the State of performance under the terms and conditions of the Contract.
- The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

**B. On Site Work Requirements**

**1. Location of Work** (Anticipated to be 515 Westshire Dr. Lansing MI 48917)

**2. Hours of Operation:**

- a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

**3. Travel:**

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

**4. Additional Security and Background Check Requirements:**

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The State will provide the following resources for the Contractor's use on this project:

- Minimal clerical support
- Desk
- Telephone
- Network Printer



Access to copiers and fax machine

Contractor will depend on assistance from State system and network administrators to complete assessment activities. State administrators will need to allow Contractor scanning technologies to operate, guide Contractor in identifying appropriate scanning windows, and assist Contractor with potential connectivity, accessibility, and bandwidth issues

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

**Executive Subject Matter Experts**

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

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

**State Project Manager- (MDTMB and Agency)**

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

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

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

The State's project management team includes:

Name	Agency/Division	Title
Rock Rakowski	DTMB	Project Manager
Richard Reasner	DTMB/Office of Security	Security Lead/ESME
Paul Groll	DTMB/Enterprise Architecture	Architecture Lead

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

Name	Agency/Division	Title
Michael Breen	MDTMB	Contract Administrator



The State shall make good faith effort to make resources available to participate in project activities as described in this section 1.202 to facilitate Phase 1 completion within a target of four (4) months and a maximum of six (6) months.

The parties acknowledge that the work effort associated with this Project is divided between the parties and dependent upon the State's performance of its respective portion. In the event of a delay or failure by the State (or the delay or failure of the Client's employees, agents or contractors) to meet its obligations, then: (a) the Contractor will not be in default or liable for any failures that were impacted or caused by the State's non-performance; (b) the parties will modify the Agreement, pursuant to Section 2.024 to appropriately adjust the price, scope and/or schedule as necessary to account for such non-performance if this engagement exceeds the six months maximum due to the State non- performance.

## **1.203 RESERVED**

### **1.300 Project Plan**

#### **1.301 PROJECT PLAN MANAGEMENT**

##### **Preliminary Project Plan**

Contractor will provide a Preliminary Project Plan, including necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State.

1. In particular, the Preliminary Project Plan will include a MS Project plan or equivalent (check the SUITE/PMM standard):
  - a. A description of the deliverables to be provided under this contract.
  - b. Target dates and critical paths for the deliverables.
  - c. Identification of roles and responsibilities, including the organization responsible. Contractor will provide a roles and responsibility matrix.
  - d. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
  - e. Internal milestones
  - f. Task durations
2. The Preliminary Project Plan will include the following deliverable/milestones for which payment shall be made:
  - a. Payment to the Contractor will be made upon the completion and acceptance of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.
  - b. Failure to provide deliverable/milestone by the identified date may be subject to liquidated damages as identified in Article 2.

##### **Orientation Meeting**

Upon 10 calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

##### **Performance Review Meetings**

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

##### **Project Control**

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



2. Within 10 working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
  - The Contractor's project organizational structure.
  - The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may be made with prior approval of the State.
  - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
  - The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
    - Staffing tables with names of personnel assigned to Contract tasks.
    - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 5 calendar days, updated semi-monthly).
    - Updates must include actual time spent on each task and a revised estimate to complete.
    - Graphs showing critical events, dependencies and decision points during the course of the Contract.
  - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

### 1.302 REPORTS

A Weekly Project Status Report (PSR) will be required from the Contractor from the start of the project until the completion of the project. The PSR must reflect the activity of all parties involved in the project and not just Contractor effort.

Reporting formats must be submitted to the State's Project Manager for approval within ten (10) business days after the execution of the contract. The Contractor will use as its base the Project Status Report SUITE template. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract unless changed with written agreement of the DTMB Project Manager. Report components will include:

- Executive summary of activity during the report period
- Accomplishments during the reporting period
- Deliverable status
- Schedule status
- Change control
- Planned accomplishments during the coming report period
  - Planned accomplishments indicate specific work started or completed and not work in process
- Action item status
  - The log may be attached rather than material copied into the actual PSR
  - Action Item includes the action, owner, target date, updates and closure date
- Issues
  - The log may be attached rather than material copied into the actual PSR
  - Detail on the Issue Log is provided in 1.401 (below)



- Risks
  - The log may be attached rather than material copied into the actual PSR
  - Detail on the Risk Log is provided in 1.402 (below)

The Contractor will include, within the Executive Summary of the Project Status Report, a statement that the project is on schedule or, if not, reasons for discrepancies and a tracking date.

An updated Project Schedule reflecting activity to date as well as updates to the estimate to complete will also be provided by the Contractor with the Project Status Report. The Project Schedule will identify tasks that are over estimate and/or behind schedule with associated actions to address the situation.

**1.400 Project Management**

**1.401 ISSUE MANAGEMENT**

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

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

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

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

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

**1.402 RISK MANAGEMENT**

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

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

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

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



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

### **1.403 CHANGE MANAGEMENT**

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

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

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

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

### **1.500 Acceptance**

#### **1.501 CRITERIA**

Deliverables that are documents must:

- Be allowed no less than 5 business days for review.
- Be in electronic format, compatible with State of Michigan software in accordance with Article
- 1.302.
  - Provide a heading indicating document name on each page
  - Provide page number and “of pages” on each page.
  - Provide an “as of” date.
  - Indicate final and not draft status
- If required by SUITE will leverage the SUITE template or leverage a template that serves the same purpose and contains similar information but only with prior approval of the DTMB Project Manager.
- Reflect correction of feedback provided by the State regarding but not limited to level of detail and clarifications.
- Reflect correction of issues identified by State personnel during the review of said documents unless waived in writing by the DTMB Project Manager

The approval process is defined in more detail in the terms and conditions and also discussed in Section 1.104.

#### **1.502 FINAL ACCEPTANCE**

The following requirements for final acceptance apply:

- That all deliverables defined in Article 1 and per the acceptance criteria defined in section 1.501 have been completed and written approval provided.



**1.600 Compensation and Payment**

**1.601 COMPENSATION AND PAYMENT**

**Method of Payment**

The project will be paid Net 45 days upon approval by the SOM Project Manager.

The Contractor is to submit invoices for payment by deliverable for Phase One. Each invoice will be approved by the DTMB Project Manager for processing. The Contractor is to submit an invoice based upon the following information:

Deliverable (1) Evaluation of Current Environment	21% of contract value for partial completion of
Deliverable (1) to include assessment of Organization, Policy, and SUITE	26.25% of contract value for final completion of
	Deliverable (1)
Deliverable (2) Evaluation of State's Security Needs	10.5% of contract value
Deliverable (3) Identification of Security, Services, and Technology Opportunities	10.5% of contract value
Deliverable (4) Maturity and Gap Analysis	10.5% of contract value
Deliverable (5) Recommendations for Security Model and technology Solution Alternatives (based upon results of deliverables 1(one) through 4 (four))	15.75% of contract value
Holdback Final sign-off upon project completion	5.5% of contract value

Holdback shall be paid as long as the following criteria are met:

1. Deliverables (1) through (5) are complete and approved
2. No outstanding issues related to completion of SOW 1 as documented by the State Project Manager

Should the State wish to exercise Phase Two and/or Phase Three, the Contractor will submit invoices for payment pursuant to a mutually agreed upon deliverable schedule which will be approved by the DTMB Project Manager.

The Contractor will be required to submit an 1% Administrative Fee (see Section 2.031) on payments remitted under the Contract.

**Travel**

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

**Out-of-Pocket Expenses**

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

In the event travel is required, all travel reimbursement will be paid according to the State of Michigan's Standardized Travel Rates and Regulations. This information may be found at:

[http://www.michigan.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html)



All air, car and hotel reservations must be made through the State Contract with Passageways Travel at (517) 333-5880 or (800) 915-8729. All original receipts must be included with your travel voucher and invoices, which must include the purchase order number. Failure to follow this policy will result in reduced reimbursement.

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

**Statements of Work and Issuance of Purchase Orders**

Unless otherwise agreed by the parties, each Statement of Work will include:

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

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

**Invoicing**

Contractor will submit properly itemized invoices to

DTMB – Financial Services  
 Accounts Payable  
 P.O. Box 30026  
 Lansing, MI 48909  
 or  
[DTMB-Accounts-Payable@michigan.gov](mailto:DTMB-Accounts-Payable@michigan.gov)

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor’s list price for each item and applicable discounts;
- Maintenance charges;



Net invoice price for each item;  
Shipping costs;  
Other applicable charges;  
Total invoice price; and  
Payment terms, including any available prompt payment discount.

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

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

#### 1.602 Holdback

The State will hold back an amount equal to five and one-half (5.5) per cent of the contract value. The amount held back shall be released to the Contractor after the State has granted Final Acceptance.



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

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

#### **2.001 CONTRACT TERM**

This Contract is for a period of 1 year beginning 5/20/2014 through 5/19/2015. All outstanding Purchase Orders must also expire upon the termination for any of the reasons listed in **Section 2.150** of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, shall remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 OPTIONS TO RENEW**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 2 additional 1 year periods.

#### **2.003 LEGAL EFFECT**

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

Except as otherwise agreed in writing by the parties, the State shall not be liable for costs incurred by Bidder or payment under this Contract, and Bidder shall have no obligation to perform any Services or provide any Deliverables, until Bidder is notified in writing that this Contract or Change Order has been approved by the State Administrative Board (if required), signed by all the parties and a Purchase Order against the Contract has been issued.

#### **2.004 ATTACHMENTS & EXHIBITS**

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

#### **2.005 ORDERING**

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

#### **2.006 ORDER OF PRECEDENCE**

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

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work shall take precedence (as to that Statement of Work only); provided, however, that a



Statement of Work may not modify or amend the terms of the Contract. The Contract may be modified or amended only by a formal Contract amendment.

## **2.007 HEADINGS**

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

## **2.008 FORM, FUNCTION & UTILITY**

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

## **2.009 REFORMATION AND SEVERABILITY**

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

### **2.010 Consents and Approvals**

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

## **2.011 NO WAIVER OF DEFAULT**

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

## **2.012 SURVIVAL**

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

### **2.020 Contract Administration**

## **2.021 ISSUING OFFICE**

This Contract is issued by the Department of Technology, Management and Budget, Procurement. DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The DTMB-Procurement Contract Administrator for this Contract is:

Michael Breen, Buyer  
Procurement  
Department of Technology, Management and Budget  
Mason Bldg., 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
BreenM@michigan.gov  
Phone 517-241-7720



## **2.022 CONTRACT COMPLIANCE INSPECTOR**

The Director of DTMB-Procurement directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. DTMB-Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract. The Contract Compliance Inspector for this Contract is:

Rock Rakowski  
Manager  
Office of Cyber Security  
Department of Technology, Management and Budget  
515 Westshire Drive  
Lansing, Michigan 48917  
Rakowskij@michigan.gov  
Phone 517-373-8059

## **2.023 PROJECT MANAGER**

The following individual will oversee the project:

Rock Rakowski, Manager  
Office of Cyber Security  
Department of Technology, Management and Budget  
515 Westshire Drive  
Lansing, Michigan 48917  
Rakowskij@michigan.gov  
Phone 517-373-8059

## **2.024 CHANGE REQUESTS**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Bidder 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, Bidder shall provide a detailed outline of all work to be done, including tasks necessary to accomplish the Additional Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

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

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



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

- (1) **Change Request at State Request**  
If the State requires Bidder to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Bidder (a "Change"), the State shall submit a written request for Bidder to furnish a proposal for carrying out the requested Change (a "Change Request").
- (2) **Bidder Recommendation for Change Requests:**  
Bidder shall be entitled to propose a Change to the State, on its own initiative, should Bidder believe the proposed Change would benefit the Contract.
- (3) Upon receipt of a Change Request or on its own initiative, Bidder shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Bidder's proposal shall include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Bidder provides a written proposal and should Bidder be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (4) By giving Bidder written notice within a reasonable time, the State shall be entitled to accept a Bidder proposal for Change, to reject it, or to reach another agreement with Bidder. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (5) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Procurement.
- (6) If the State requests or directs the Bidder to perform any activities that Bidder believes constitute a Change, the Bidder must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Bidder fails to notify the State before beginning to work on the requested activities, then the Bidder waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Bidder commences performing work outside the scope of this Contract and then ceases performing that work, the Bidder must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

## 2.025 NOTICES

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

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

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

## **2.027 RELATIONSHIP OF THE PARTIES**

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

## **2.028 COVENANT OF GOOD FAITH**

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

## **2.029 ASSIGNMENTS**

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

Bidder 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 Bidder is not relieved of its responsibility to perform any of its contractual duties and the requirement under the Contract that all payments must be made to one entity continues.

If the Bidder intends to assign the contract or any of the Bidder's rights or duties under the Contract, the Bidder must notify the State in writing at least 90 days before the assignment. The Bidder 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 ADMINISTRATIVE FEE AND REPORTING**

The Bidder must remit an administrative fee of   1   % on all payments remitted to Bidder under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions and other states (including governmental subdivisions and authorized entities). Bidder must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

Itemized purchasing activity reports should be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

The Department of Technology, Management and Budget  
Financial Services – Cashier Unit



Lewis Cass Building  
320 South Walnut St.  
P.O. Box 30681  
Lansing, MI 48909

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each quarter.

### **2.032 MEDIA RELEASES**

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

### **2.033 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**

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

### **2.035 WEBSITE INCORPORATION**

The State is not bound by any content on the Bidder's website, even if the Bidder'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**

Bidder acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Bidder, or as a Bidder 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 Bidder and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

### **2.038 DISASTER RECOVERY**

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



## **2.040 Financial Provisions**

### **2.041 FIXED PRICES FOR SERVICES/DELIVERABLES**

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

### **2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES**

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

### **2.043 SERVICES/DELIVERABLES COVERED**

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

### **2.044 INVOICING AND PAYMENT – IN GENERAL**

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Bidder invoice shall show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Bidder's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.600**.
- (c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Bidder after the proposed Contract Agreement has been signed and accepted by both the Bidder and the Director of Procurement, Department of Management & Budget. This activity shall occur only upon the specific written direction from DTMB-Procurement.

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

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



#### **2.045 PRO-RATION**

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

#### **2.046 ANTITRUST ASSIGNMENT**

The Bidder 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 Bidder, toward fulfillment of this Contract.

#### **2.047 FINAL PAYMENT**

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

#### **2.048 ELECTRONIC PAYMENT REQUIREMENT**

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

#### **2.050 Taxes**

##### **2.051 EMPLOYMENT TAXES**

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

##### **2.052 SALES AND USE TAXES**

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

#### **2.060 Contract Management**

##### **2.061 BIDDER PERSONNEL QUALIFICATIONS**

All persons assigned by Bidder to the performance of Services under this Contract must be employees of Bidder 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. Bidder must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent bidders engaged by Bidder solely in a staff augmentation role must be treated by the State as if they were employees of Bidder for this Contract only; however, the State understands that the relationship between Bidder and Subcontractor is an independent bidder relationship.



## 2.062 BIDDER KEY PERSONNEL

- (a) The Bidder must provide the Contract Compliance Inspector 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 shall have 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, Bidder shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall 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 shall provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Bidder must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Bidder'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 Bidder, 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 Bidder personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Bidder provides 30 days of shadowing unless parties agree to a different time period. The Bidder with the State must review any Key Personnel replacements, and appropriate transition planning will 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) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Section 2.152, Contractor will issue to the State the corresponding credits set forth below (each, an "**Unauthorized Removal Credit**"):

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$10,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 20 calendar days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 20 calendar days, in addition to the \$10,000.00 credit specified above, Contractor will credit the State \$1,000.00 per calendar day for each day of the 20 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$20,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

If Contractor assigns a replacement to shadow the removed Key Personnel for greater than the required 20 calendar days, the credit payable by the Contractor to the State shall be reduced by \$1,000 for each such additional calendar day, up to a maximum reduction of \$10,000 for a job shadow period of 30 days.



- (f) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection 0** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be 1) Credited or set off against the final invoice for fees or other charges payable to Contractor under this Contract for the scope described by section 1 as of the effective date of this Contract, or 2) Used as a service credit by the State against additional related services performed under this Contract, added to the scope described by section 1 after the effective date of this Contract.
- (g) In the event the State elects to exercise its rights to Unauthorized Removal Credits described by this section 2.062, such election shall be the State's sole and exclusive remedy to address Contractor's unauthorized removal of 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 Bidder 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 Bidder cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service shall not be counted for a time as agreed to by the parties.

### **2.064 BIDDER PERSONNEL LOCATION**

All staff assigned by Bidder to work on the Contract shall perform their duties either primarily at Bidder's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel shall, 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 Bidder personnel may be assigned office space to be shared with State personnel.

### **2.065 BIDDER IDENTIFICATION**

Bidder employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Bidder 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**

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

### **2.067 CONTRACT MANAGEMENT RESPONSIBILITIES**

Bidder shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Bidder to perform the Services. Bidder shall have overall responsibility for



managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Bidder's duties shall include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Bidder's own responsibilities) and providing timely notice to the State in Bidder's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

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

#### **2.068 BIDDER RETURN OF STATE EQUIPMENT/RESOURCES**

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

#### **2.070 Subcontracting by Bidder**

#### **2.071 BIDDER FULL RESPONSIBILITY**

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

#### **2.072 STATE CONSENT TO DELEGATION**

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

#### **2.073 SUBCONTRACTOR BOUND TO CONTRACT**

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



any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

#### **2.074 FLOW DOWN**

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

#### **2.075 COMPETITIVE SELECTION**

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

#### **2.080 State Responsibilities**

#### **2.081 EQUIPMENT**

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

#### **2.082 FACILITIES**

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

#### **2.090 Security**

#### **2.091 BACKGROUND CHECKS**

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

#### **2.100 Reserved**

#### **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 Bidder'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 Bidder's systems or facilities. The Bidder must provide reasonable assistance for the State's representatives during inspections.



## **2.112 RETENTION OF RECORDS**

- (a) The Bidder must retain all financial and accounting records related to this Contract for a period of 7 years after the Bidder performs any work under this Contract (Audit Period).
- (b) If an audit, litigation, or other action involving the Bidder's records is initiated before the end of the Audit Period, the Bidder 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 Bidder, may examine and copy any of the Bidder'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 Bidder 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 Bidder, 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 Bidder 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 Bidder and the State will meet to review any audit report promptly after its issuance. The Bidder must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Bidder 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) Accenture shall refund any amount determined by an audit to have been paid by the State in excess of the correct invoice amount, with interest in the amount of 1% per month from the date of overpayment by the State. The State shall pay any amount determined by an audit to be unpaid by the State despite Accenture's issuance of a proper undisputed invoice, with interest in the amount of 1% per month from the due date of such proper invoice.

## **2.120 Warranty**

### **2.121 WARRANTIES AND REPRESENTATIONS**

The Contractor represents and warrants:

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



- (b) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (c) It is qualified and registered to transact business in all locations where required.
- (d) Contractor Knowledge Capital or Custom Components shall contain any Harmful Code;
- (e) Contractor Knowledge Capital or Custom Components shall not contain, nor operate in such a way that it is compiled with or linked to, any Open-Source Components other than Approved Open-Source Components;
- (f) As delivered, installed, specified, or approved by Contractor and used by the State or any Third Party authorized by the State, all software, to the best of contractor's knowledge: (i) will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; and (ii) will comply with all applicable Laws; and
- (g) No expiration or loss of any patent or application for patent rights in any Contractor Knowledge Capital is pending, or, to Contractor's knowledge after reasonable inquiry, threatened or reasonably foreseeable, and Contractor has no reason to believe that any claims of any such patent or patent application are or will be invalid, unenforceable, fail to issue, or be materially limited or restricted beyond the current claims, except for patent rights expiring at the end of their statutory term.

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

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **2.122 CONFLICT OF INTEREST & BUSINESS ETHICS**

- (a) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (b) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (c) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (d) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (e) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately



represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.

- (f) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (g) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (g) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Procurement.

**2.123 RESERVED**

**2.124 RESERVED**

**2.125 RESERVED**

**2.126 RESERVED**

**2.127 RESERVED**

**2.128 RESERVED**

**2.130 Insurance**

**2.131 LIABILITY INSURANCE**

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

(a) The Bidder must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater.

(b) The Bidder waives all rights against the State for the recovery of damages that are covered by the worker's compensation insurance policy the Bidder is required to maintain under this Section. The Bidder'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, to the extent necessary for Bidder to meet its obligations under this Agreement.

(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. Insurance shall neither limit nor expand Bidder's liability under this Contract.

(g) The Bidder 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 Bidder must maintain tail coverage for at least three (3) years following the termination of this Contract.



(h) The Bidder 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 or expand any liability or indemnity of the Bidder to any indemnified party or other persons.

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

(k) If the Bidder 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 Bidder at least 30 days' notice and an opportunity to cure, 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 Bidder, or require the Bidder 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 Bidder 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:

The Bidder shall be responsible for any deductible under the required policy.

Additional Requirements:

The Bidder 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.

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

**(iii) Motor Vehicle**

Minimal Limits:

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

**(iv) Reserved**

**(v) Workers' Compensation**

Minimal Limits:

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



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

**Additional Requirements:**

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

**(vii) Professional Liability (Errors and Omissions)**

**Minimal Limits:**

- \$3,000,000 Each Claim
- \$3,000,000 Annual Aggregate

**2.132 SUBCONTRACTOR INSURANCE COVERAGE**

The Bidder must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.131, Liability Insurance, but only to the extent such coverage is commensurate with the work performed by the Subcontractor.

**2.133 CERTIFICATES OF INSURANCE**

Before the Contract is signed, and not less than 20 days following the insurance expiration date every year thereafter, the Bidder 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 Bidder must provide DTMB-Procurement. with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.131, Liability Insurance. Each certificate must be on the standard "Accord" form.

**2.140 Indemnification**

**2.141 GENERAL INDEMNIFICATION**

To the extent permitted by law, the Bidder 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 third party sustaining personal injury or tangible personal property damage attributable to the negligence or tortious acts of the Bidder or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

**2.142 CODE INDEMNIFICATION**

To the extent permitted by law, the Bidder shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Bidder's breach of any Harmful Code Warranty.

**2.143 EMPLOYEE INDEMNIFICATION**

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Bidder 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 Bidder 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 Bidder 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 Deliverable, Service, or piece thereof (excluding the provision of third-party products) provided by the Bidder or its Subcontractors, or the operation, use or reproduction thereof infringes any United States patent issued prior to the Bidder's provision of same, 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 Bidder's opinion be likely to become the subject of a claim of infringement, the Bidder must at the Bidder'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 Bidder, (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 Bidder, (iii) accept its return by the State with appropriate credits to the State against the Bidder's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it. Any credits provided by Bidder to the State pursuant to (iii) above shall be the State's sole and exclusive remedy to address the State's losses associated with any Services or Deliverables that become subject to a claim of infringement.

Notwithstanding the foregoing, the Bidder 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 Bidder, 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 Bidder under this Contract.

#### **2.145 CONTINUATION OF INDEMNIFICATION OBLIGATIONS**

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

#### **2.146 INDEMNIFICATION PROCEDURES**

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

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



- (b) If Bidder 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 Bidder must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Bidder's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Bidder 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 Bidder in writing within 10 days after the State's receipt of Bidder's information requested by the State under clause (ii) of this paragraph if the State determines that the Bidder has failed to demonstrate to the reasonable satisfaction of the State the Bidder'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 Bidder 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 Bidder. If it is determined that the claim was one against which Bidder was required to indemnify the State, upon request of the State, Bidder 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 Bidder breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State shall provide the Bidder with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

#### **2.152 TERMINATION FOR CAUSE**

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



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

### **2.153 TERMINATION FOR CONVENIENCE**

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

### **2.154 TERMINATION FOR NON-APPROPRIATION**

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

### **2.155 TERMINATION FOR CRIMINAL CONVICTION**

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

### **2.156 TERMINATION FOR APPROVALS RESCINDED**

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



## 2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION

- (a) If the State terminates this Contract for any reason, the Bidder must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Bidder's possession, (c) return all materials and property provided directly or indirectly to Bidder 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 Bidder 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 Bidder adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Bidder for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Bidder under this Contract, at the option of the State, becomes the State's property, and Bidder 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, Bidder for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

## 2.158 RESERVATION OF RIGHTS

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

### 2.160 Termination by Bidder

#### 2.161 TERMINATION BY BIDDER

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

### 2.170 Transition Responsibilities

#### 2.171 CONTRACTOR TRANSITION RESPONSIBILITIES

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor shall comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third



party designated by the State, subject to the provisions of **Section 2.024**. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ( thirty (30)) days. These efforts must include, but are not limited to, those listed in **Section 2.150**.

#### **2.172 RESERVED CONTRACTOR PERSONNEL TRANSITION**

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

#### **2.173 RESERVED CONTRACTOR INFORMATION TRANSITION**

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

#### **2.174 RESERVED**

#### **2.175 RESERVED TRANSITION PAYMENTS**

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

#### **2.176 RESERVED**

#### **2.180 Stop Work**

#### **2.181 STOP WORK ORDERS**

The State may, at any time, by written Stop Work Order to Bidder, require that Bidder 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 Bidder, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this **Section**. Upon receipt of the stop work order, Bidder must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in **Section 2.182**.

#### **2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER**

The Bidder shall resume work if the State cancels a Stop Work Order or if it expires. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the Stop Work Order results in an increase in the time required for, or in Bidder's costs properly allocable to, the performance of any part of the Contract; and (b) Bidder 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 Bidder proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

### **2.183 ALLOWANCE OF BIDDER COSTS**

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

## **2.190 Dispute Resolution**

### **2.191 IN GENERAL**

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

### **2.192 INFORMAL DISPUTE RESOLUTION**

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

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

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

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

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

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

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



### **2.193 INJUNCTIVE RELIEF**

A claim between the State and the Bidder is not subject to the provisions of Section 2.192, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other 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, Bidder agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Bidder further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### **2.202 UNFAIR LABOR PRACTICES**

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

### **2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

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

### **2.204 RESERVED**

## **2.210 Governing Law**

### **2.211 GOVERNING LAW**

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



## **2.212 COMPLIANCE WITH LAWS**

The parties shall comply with all applicable state, federal and local laws and ordinances applicable to their respective businesses and operations during the course of Bidder's provision of the Services/Deliverables.

## **2.213 JURISDICTION**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Bidder 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. Bidder 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 Bidder 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 third party claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Bidder; 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.

The sole liability of Bidder and any of its Affiliates (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any and all claims in any manner related to this Contract, including the Deliverables or Services, will be the payment of direct damages, not to exceed (in the aggregate) the fees received by Bidder with respect to the Services or Deliverables involved under the applicable SOW. Except for the specific remedies expressly identified as such and below in this Agreement, The State's exclusive remedy for any claim arising out of this Agreement or any applicable SOW will be for Bidder, upon receipt of written notice, to use commercially reasonable efforts to cure the breach at its expense, or failing that, to return the fees paid to Bidder for the Services or Deliverables related to the breach.

This limitation of liability shall not apply to:

- (a) third party claims for infringement of United States patent, copyright, trademark or trade secrets;
- (b) third party claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or,
- (c) claims for direct damages covered by other specific provisions of this Contract, specifically: section 2.152 describing the State's remedies in the event of a termination of the Contract for cause; or, section 2.305 describing Contractor's responsibilities in the event of a loss of data.

### **2.230 Disclosure Responsibilities**

#### **2.231 DISCLOSURE OF LITIGATION**

Unless prohibited by a court of competent jurisdiction, Bidder shall disclose any material criminal litigation, investigations or proceedings against the Bidder (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Bidder (and each Subcontractor) shall notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Bidder (or, to the extent Bidder is aware, any Subcontractor) is a Defendant or Respondent, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Bidder or any Subcontractor; or (ii) a claim or written allegation of fraud against Bidder or, to the extent Bidder is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Bidder shall



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

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

- (a) the ability of Bidder (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Bidder (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Bidder must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (1) Bidder and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
  - (2) Bidder 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) Bidder shall make the following notifications in writing:
  - (1) Within 30 days of Bidder 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, Bidder must notify DTMB-Procurement.
  - (2) Bidder shall also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
  - (3) Bidder shall also notify DTMB-Procurement within 30 days whenever changes to company affiliations occur.

## **2.232 RESERVED**

## **2.233 BANKRUPTCY**

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

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

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

## **2.240 Performance**

### **2.241 TIME OF PERFORMANCE**

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



- (b) Without limiting the generality of **Section 2.241**, Bidder shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Bidder believes that a delay in performance by the State has caused or will cause the Bidder to be unable to perform its obligations according to specified Contract time periods, the Bidder 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. Bidder will not be in default for a delay in performance to the extent the delay is caused by the State.

#### **2.242 RESERVED**

#### **2.243 RESERVED**

#### **2.244 EXCUSABLE FAILURE**

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

The Bidder 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 Bidder which are caused by acts or omissions of its Subcontractors will not relieve Bidder of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Bidder 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 Reserved****2.251 RESERVED****2.252 RESERVED****2.253 APPROVAL OF DELIVERABLES, IN GENERAL**

All Deliverables (Written Deliverables and Custom Deliverables) require formal written approval by the State, in accordance with the following procedures, unless otherwise provided for in a Statement of Work specific to the Deliverables to be provided to the State. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by Contractor in accordance with this Section.

**2.254 RESERVED 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 Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (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 prior to 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 Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that shall be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). The parties shall deem accepted any Written Deliverable for which the State does not provide such notice within the State Review Period. If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) 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 will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

**2.255 RESERVED****2.256 RESERVED****2.260 Ownership**



### **2.261 OWNERSHIP OF WORK PRODUCT BY STATE; LICENSE TO BIDDER**

Upon final payment to Bidder, the State shall own all Deliverables, as they are work made for hire by the Bidder for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables. Unless otherwise provided for in a Statement of Work, the State hereby grants to Bidder a perpetual, transferable, non-exclusive, paid-up right and license to use, copy, modify and prepare derivative works of the Deliverables, for purposes of Bidder's business.

### **2.262 VESTING OF RIGHTS**

With the sole exception of any preexisting licensed works identified in the SOW, the Bidder 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 Bidder, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Bidder for the State. From time to time upon the State's request, the Bidder 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**

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, as set forth in Section 2.300, State Data. No employees of the Contractor, other than those on a strictly need-to-know basis, will have access to State Data.

The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Bidder for any purpose. The State will not possess or assert any lien or other right against the Bidder'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 Bidder will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Bidder by the State, and paid for by the State, will be owned by the State. Any software licensed through the Bidder or its affiliates and sold to the State, will be licensed directly between the software licensor and the State, subject to the State's written acceptance of such provisions. Accenture shall provide reasonable notice to the State prior to the use of any third party materials and shall make reasonable attempts to provide similar software in the event that the State does not accept a third party's licensing terms.

### **2.265 RESIDUALS**

Subject to Bidder's obligations described by section 2.300 hereto, in no event will Bidder be precluded from developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the Deliverables. In addition, Bidder will be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of providing the Services.



## **2.270 State Standards**

### **2.271 EXISTING TECHNOLOGY STANDARDS**

The Bidder 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 Bidder has access to the State computer system, Bidder must comply with the State's Acceptable Use Policy, see [http://michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). All Bidder 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 Bidder's access to the State system if a violation occurs.

### **2.273 SYSTEMS CHANGES**

Bidder is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Bidder 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 Reserved**

### **2.281 RESERVED**

## **2.290 Environmental Provision**

### **2.291 ENVIRONMENTAL PROVISION**

**Energy Efficiency Purchasing Policy:** The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

**Environmental Purchasing Policy:** The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution.

Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Bidder should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

**Hazardous Materials:** For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health,



natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

- (a) The Bidder shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Bidder's Work. Before the commencement of Work, the State shall advise the Bidder of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Bidder encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Bidder shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Bidder, or does not result in whole or in part from any violation by the Bidder of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Bidder shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Bidder for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Bidder, or results in whole or in part from any violation by the Bidder of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Bidder, the Bidder shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

**Refrigeration and Air Conditioning:** The Bidder shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

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

### 2.300 State Data.



### **2.301 Ownership**

The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Deliverables/Services; and (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Deliverables/Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Deliverables/Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. In accordance with Section 2.306 below, the parties agree that HIPAA provisions regarding the safeguarding of PHI are not applicable to the Services to be performed by Contractor, and that this Section 2.300 shall establish the parties obligations with regard to safeguarding PHI. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section 2.301 survives termination or expiration of this Contract.

### **2.302 Contractor Use of State Data**

Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Deliverables/Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Deliverables/Services. Contractor must: (a) keep and maintain State Data in utmost confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Deliverables/Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section 2.302 survives termination or expiration of this Contract.

### **2.303 Extraction of State Data**

Contractor must, within three (3) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of any State Data maintained by Contractor in the format specified by the State.

### **2.304 Backup and Recovery of State Data**

Unless otherwise specified in the Statement of Work, Contractor is responsible for maintaining a backup of State Data and providing for an orderly and timely recovery of such data. Unless otherwise described in the Statement of Work, Contractor must maintain a contemporaneous backup of State Data that can be recovered within four (4) hours at any point in time.

### **2.305 Loss of Data**

In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by the Parties that relate to the protection of the security, confidentiality, or integrity of State Data (collectively, a "Breach") Contractor must, as applicable: (a) if caused by Contractor, notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials reasonably requested by the State; (c) in the case of PII or PHI, to the extent the Breach was caused by contractor and at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) to the extent the Breach was caused by contractor, in the case of PII or PHI, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII or PHI, for no less than eighteen (18) months following



the date of notification to such individuals; and provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence; (e) In addition, the following categories of damages shall be deemed to be direct damages for which Accenture's liability shall be unlimited: (i) data privacy breach investigation, (ii) remediation, (iii) data subject and/or regulatory authority notification, (iv) data subject call center support, (v) data subject credit monitoring, (vi) regulatory fines, and (vii) reasonable legal fees and expenses associated with the State's investigation of and response to such event, including reasonable attorneys' fees and disbursements incurred in connection with defending Claims made by parties who were affected by such Personal Data Security Breach or by regulators or other governmental entities relating to such Personal Data Security Breach, and costs of settlement and judgment in connection with any related litigation, to the extent such damages are caused by a violation by Accenture of its obligations under this section; (f) Notification to affected individuals, as described above, must be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. This Section 2.305 survives termination or expiration of this Contract.

### **2.306 HIPAA Compliance**

For purposes of the Services to be performed by Contractor, the State and Contractor agree that the State is not a Covered Entity and Contractor is not a Business Associate as those terms are defined by HIPAA. Accordingly, the parties have not entered into a Business Associate Agreement ("BAA") and no such agreement is applicable to the Services to be performed by Contractor. In the event the nature of the State's operations or the Services to be performed by Contractor change such that a BAA is required by HIPAA, the parties will promptly enter into a BAA to define the parties obligations with regard to safeguarding Protected Health Information and to further cooperate as reasonably necessary to keep the State and Contractor in compliance with HIPAA.]

### **2.310 Confidential Information.**

#### **2.311 Acknowledgement**

Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This Section survives termination or expiration of this Contract.

#### **2.312 Meaning of Confidential Information**

The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, State Data is deemed to be Confidential Information.



### **2.313 Obligation of Confidentiality**

The parties agree to hold all Confidential Information in utmost confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. Confidential Information provided to Contractor by the State under its performance under this Contract must remain in the United States and cannot be stored or transmitted outside of the United States. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is approved in writing by the State or is an affiliate; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; 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 of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this Section 2.313.

### **2.314 Cooperation to Prevent Disclosure of Confidential Information**

Each party must use good faith efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

### **2.315 Remedies for Breach of Obligation of Confidentiality**

Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

### **2.316 Surrender of Confidential Information upon Termination**

Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. If Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and certify the same in writing within five (5) calendar days from the date of termination to the other party.

### **2.320 Data Privacy and Information Security**

#### **2.321 Undertaking by Contractor**

Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all Contractor Representatives comply with all of the foregoing. In



no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available at [http://www.michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html).

### **2.322 Right of Audit by the State**

Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. During the providing of Services, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

### **2.323 Audit Findings**

With respect to State Data, Contractor must implement any required safeguards as identified by the State by an audit of Contractor's data privacy and information security program, determining such required safeguards have not been implemented.

### **2.324 State's Right to Termination for Deficiencies**

The State reserves the right, at its sole election, to immediately terminate this Contract or the Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section 2.324.



**Glossary**

Days	Means calendar days unless otherwise specified.
24x7x365	Means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
Additional Service	Means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Contractor Knowledge Capital	Means materials existing prior to commencement of Contractor’s performance of the relevant Services, or developed outside the scope of such Services, that are proprietary to Contractor, and all associated intellectual property rights and any enhancements and modifications to same, whether or not such enhancements and modifications are developed as part of the Services.
Custom Components	Means materials that are originally developed by Contractor during the course of its performance of the Services and supplied as, or as part of, a Deliverable. Custom Components do not include Accenture Knowledge Capital
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	A product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Harmful Code	Means (i) program code or programming instruction or set of instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) other code typically described as a virus or by similar terms, including Trojan horses, worms or backdoors.
Hazardous material	Any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).
Incident	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Contractors
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.



New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	Any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons
Personal Data Security Breach	Means an incident or occurrence in which (i) Contractor's information systems are exposed to Harmful Code and such code could be transmitted to State systems containing State Data; (ii) unauthorized access is granted or obtained to servers or workstations that contain State Data or Contractor discovers that State Data is being used, copied or destroyed inappropriately; (iii) Contractor experiences an attack or the compromise of a server or workstation containing State Data requiring that it be taken offline; (iv) unauthorized access or disclosure has occurred involving State Data; or (v) any unauthorized transmission, loss of, or disclosure of State Data with respect to which the Parties determine that notification to affected parties is reasonably necessary to comply with applicable laws or to protect the State's operations or reputation.
Post-Consumer Waste	Any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.
Post-Industrial Waste	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	The series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the



	definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



**Attachment C (Cost Table)**

Contractors are required to propose a Firm Fixed Cost for Phase 1 and Phase 2 and an hourly rate for Phase 3 in **Attachment C (Cost Table) below**. The State will only consider deliverable- The Fixed Fee is firm for the duration of the contract. Travel and other expenses will not be reimbursed.

The pricing for Phases 1 and 2 below is offered as firm fixed fee. Our pricing was estimated based on the assumptions described throughout section 1.104, Bidder Requirements, payable in accordance with the redlines provided in section 1.601, Compensation and Payment. Significant deviations from our assumptions will affect pricing.

Option A	\$ 998,750 Fixed Cost
Option B	\$ 775,000 Fixed Cost
Option C	Blended hourly rate of \$220-270/hour, depending on the nature of the implementation work as determined through the completion of Phases 1 and 2.

**The Contractor must have the ability to commit to providing resources and subsequent tasks for the completion of all three Deliverable Phases. The State reserves the right to disqualify Bidders who do not commit to the tasks required of all three phases and provide subsequent cists therein for all three phases.**