

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

**NOTICE  
 OF  
 CONTRACT NO. 071B5500041  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
FireEye, Inc. 1440 McCarthy Blvd. Milpitas, CA 95035	Brian Gallentine	<a href="mailto:brian.gallentine@fireeye.com">brian.gallentine@fireeye.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(847) 865-5677	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Richard Reasner	517-241-4090	<a href="mailto:reasnerr@michigan.gov">reasnerr@michigan.gov</a>
BUYER:	DTMB	Mike Breen	517-284-7002	<a href="mailto:breenm@michigan.gov">breenm@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b>			
<b>Digital Incident Response (DIR) System</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	February 3, 2015	February 2, 2020	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			\$1,522,161.60

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N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$1,522,161.60	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #084R4300040. 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 #: 071B5500041**

FOR THE CONTRACTOR:	FOR THE STATE:
FireEye, Inc.	Signature
Firm Name	Bill Pemble, IT Division Director
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
	Date

Contract No. 071B5500041



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

**Contract No.**  
**(Digital Incident Response Software System (DIR))**

Buyer Name: Michael Breen  
Telephone Number: 1-517-7720  
DTMB-Procurement Telephone Number 1-855-MI-PURCH (1-855-647-8724)  
E-Mail Address: breenm@michigan.gov

**ISSUE DATE: JULY 10, 2014**

**TIMELINE**

**DEADLINE FOR BIDDER TO SUBMIT QUESTIONS: 3:00 PM EST ON JULY 22, 2013**

**STATE ANSWERS TO BIDDER QUESTIONS: JULY 29, 2014**

**FINAL DEADLINE TO SUBMIT PROPOSAL: 3:00 PM EST ON AUGUST 19, 2014**

**ANTICIPATED CONTRACT BEGIN DATE: FEBRUARY 25, 2015**

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

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

The State of Michigan (SOM, State), through the Department of Technology, Management & Budget (DTMB) has issued a contract with a qualified firm to provide Michigan with a Digital Incident Response (DIR) solution to enable the State of Michigan to search their network end point devices for signs of compromise and malware activity incidents.

The State seeks to have the project begin within fourteen (14) days after the execution of the contract. The negotiated contract will have a term of one five (5) year contract, with yearly support renewal for two (2), one-year extensions. Contract option year extensions will be at the sole discretion of the SOM and will be based upon funding and acceptable performance of the product as determined by the SOM.

#### **1.002 BACKGROUND**

The State has undertaken a number of security initiatives in the past few years. These initiatives have served the purpose to increase the security posture within the State's IT infrastructure. In light of increasing risks and recent incidents in all sectors across the United States, the State of Michigan (SOM) Cyber Security Operations Center (SOC) seeks to strengthen its current security posture by purchasing an additional security system that will search for and identify advanced level threats or signs of compromise on its network endpoints.

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

#### **1.101 IN SCOPE**

The State of Michigan's Security Operations Center (SOC) requires an advanced threat detection system to search and detect known high risk system configurations, and abnormal device activity or connections on all network desktops and servers. The DIR solution will provide security technicians with the ability to search network endpoints for any type of advanced threat known by outside knowledge sources with canned search definitions files and also allow customizable search definition file creation for detailed and specific searches as required. This Contract will require the following services and system functionality to enhance the State of Michigan's network endpoint security posture as follows:

The Contractor of the solution will work with the State to assist with the installation of the new Digital Incident Response (DIR) system and identify all required hardware, software and configuration requirements to operate the DIR system to its fullest capability on the State of Michigan's network. The hardware platform will be owned and operated by the State of Michigan. The Contractor's hardware appliance, and the costs for such hardware are identified in the contract's cost tables.

The Contractor's DIR system will use industry standard IT Software, Security Information and Event Management (SIEM) tools, comply with industry best practices of securely detecting possible security incidents and provide industry standard response strategy options for the State of Michigan SOC personal to implement. The software will have or is being evaluated for a Trusted Product Evaluation (TPE) rating or National Information Assurance Partnership (NIAP) Common Criteria Evaluation and Validation Scheme (CCEVS) rating from the National Security Agency (NSA) and be listed as a Certified Product with an Evaluation Assurance Level of two (2) or greater.

The DIR solution will provide the State with a clear picture of potential advanced cyber security attack attempts and threats across all desktop and server operating system files, events, activity, hash values and will extract activity

details from the device as evidence. The system will enable technicians to collect forensic artifacts of potential threats and isolate the device until mitigation can be completed. The software will have the ability to categorize findings on devices, report high risk configurations, and detect unusual device behavior and alert staff of activities that have taken place or are currently active on the device.

Through a secure interface, the State will be able to configure search files and alert settings, review finding activities on all desktops; analyze device activity results, create output files of event findings and recommended mitigations, and create reports as needed to report security metrics.

The DIR system licensing will include access to security intelligence resource information and recommended mitigation guidance referencing external knowledge resources as needed to resolve detected security incidents by the DIR system.

Figure 1– State Devices to Be Monitored

Device Category	Units
PC's	55000
Servers	4000

A more detailed description of the solution for this project is provided in Article 1, Section 1.104, Work and Deliverables.

**1.102 OUT OF SCOPE**

- The actual managing of the network devices is out of scope
- A remote hosted service

**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, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

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

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

[http://michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html)

All software and hardware items provided by the Contractor must run on and be compatible with the 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)

**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)

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

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

**Look and Feel Standard**

All software items provided by the Contractor must be ADA complaint or under-going transition towards being ADA complaint and adhere to the Look and Feel Standards [www.michigan.gov/somlookandfeelstandards](http://www.michigan.gov/somlookandfeelstandards).

**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 DIR WORK AND DELIVERABLES**

The Contractor will plan that the system will be installed, customized and fully deployed and operational within one hundred twenty (120) days after the contract execution date. The hardware must be installed and operational within forty-five (45) days of the contract execution date.

**A. Business Requirements**

The Contractor must provide a 24x7x365 search based DIR solution that will analyze network desktop and server system files, memory, applications, configurations and activity events for known compromise activities and provide response strategies for mitigation of the activity. The system will be able to search for system threats and identification of potential security risks for the initial number of devices listed in Figure 1. The system will reside on the State of Michigan's network and only be accessible by the State of Michigan's Security Operation Center's (SOC) staff. Should the state of Michigan have a service-related issue with the DIR system, state staff must be able to contact the Contractor's customer service support staff on a 24x7x365 basis and work with the Contractor to resolve the issue via phone or a site visit if the issue cannot be resolved in the course of one or two (1-2) business days for major work stoppage critical issues or two (2-4) days for system component non-critical issues. Site visits will be

mutually agreed to with SOM and the Designated Support Engineer (DSE) and scheduled when necessary to resolve issues as part of a Platinum Priority Plus support service.

The DIR system will scan and/or search as many different types of operating systems as possible on the State's network and detect high, medium, and low threat incident items that reside on or are active on a device. The DIR system will assess the potential risk, prioritize the events using an industry standardized event classification system, and generate notification alerts that will suggest countermeasures or defense strategies to the State of Michigan Security Operations Center (SOC) technicians for remediation. The DIR system will capture incident artifacts to assist the State in investigation of the activity and provide court admissible evidence if required.

The DIR system will support rapid triage of network desktop devices to prevent or stop an attack. The DIR system will allow customization of search definition files as desired by SOM and receive updated definition files from an external source to stay current on the latest known attack mechanisms and remediations.

The DIR system administration interface will provide the State with access to the SOM device threat or compromise information and associated tools that are designed for the state to search for security threats and recommend response actions. The DIR interface and system will be available 24x7x365 and will provide the state with security intelligence awareness information and security response and mitigation information.

The DIR system interface will allow security technicians to add and remove desktops or servers, or auto detect them, provide canned vulnerability search definition files and allow technician's to configure vulnerability search files, generate device activity reports or file exports, and generate analysis reports for all device threats detected. The DIR interface will support pre-defined reports to be used by the SOC to deliver monthly, weekly, and daily security metric reports or general device health reports.

The DIR system must be flexible enough to allow the State to add and remove both internal and external network devices from searches and also detect and flag internal and external systems that appear on the SOM network that are new and unknown by the DIR. The DIR system will have redundancy built in and an expected Up-Time Percentage of 99.90% or better, that include redundant hard drives and power supplies, and a SKU can be used as a hot standby in the case of a major failure. .10% will be allowed for planned upgrades, patches and maintenance.

The Contractor will make available all advanced DIR system white papers and DIR user documentation so the State of Michigan has access to all updated system information as it is updated by the manufacturer for the duration of the contract. If the website has limited access the Contractor will allow at least three State of Michigan Cyber Security accounts access. The website will also include training materials required for the system with any new updates, patch release information for the system and documentation of changes that are included in updates or patches to the system.

## **B. Implementation**

The Contractor will assist the State of Michigan with the installation of the DIR system and create a final Installation Plan to be reviewed and approved by the State. The Preliminary Installation Plan with the process steps, roles and responsibilities, and estimated time lines will be updated and transition to the final Installation Plan. The installation plan will outline all steps in the installation process of setting up the DIR system at the SOM, to include hardware specifications, Operating System versions, additional software and versions required, open ports and protocols for communications or any external communication links required.

The desired format for the DIR Installation Plan is in a Microsoft Project format with attached detailed information documents as needed for each step. Once approved by the State of Michigan the installation process will be implemented with the Contractor to install and configure the DIR system and devices for scanning. Once the system is set up and operational, a seventy-five (75) day deployment period will be undertaken to add devices, customize device search files, and create custom reports and output files.

The Contractor must provide a **Final Installation Plan**; it may be embedded in the overall DIR Contract Project Management Plan but will have definitive Installation Start and Installation Completion tasks to clearly define all steps of the Installation Plan.

The Plan will include testing steps and identify how issues and system errors will be tracked, reported and resolved during testing.

The system must be set up and running within forty-five (45) calendar days after the purchase order has been delivered to the Contractor. During the installation period, search definition file customization, and reporting requirements will be defined and configured.

The State would like assistance with DIR system configuration changes to customize the system to work to its fullest extent in all State of Michigan environments and be able to export reports of findings. The system will be fully "customized", configured and completely deployed by one hundred twenty (120) days after execution of the Contract.

**C. DIR System Support Services**

Contractor will need to provide solution support services for the State of Michigan's Digital Incident Response (DIR) security system twenty (24) hours a day, seven (7) days a week, and three hundred sixty five (365) days a year. This includes any DIR software system issues as requested by the approved State of Michigan security personal any time during the contract year(s).

The Contractor will also provide DIR software upgrade support and be available for on-site support if required during the upgrade process as mutually agreed upon. This will include system patch installation support as well. On-site support requirements will be evaluated given the complexity of the changes to the system and risk to the state's 24x7x365 monitoring operations. Major upgrades making changes to key system components will qualify as a high risk upgrade and Contractor on-site assistance will be requested and planned for in advance as mutually agreed upon. The Contractor will always have a roll-back plan to restore the DIR system within twelve hours if an upgrade or patch degrades or damages the DIR systems level of performance.

The Contractor will supply general system service support on a 24x7x365 basis, via phone, email and an online support portal, as further detailed in the Contractor's Support Terms. The Contractor will use commercially reasonable efforts to respond to requests, by severity, as follows:

**Severity Descriptions and Response Timelines**

Severity	Impact	Initial Response Time
One	Product rendered unresponsive, requires constant restarting, or results in irretrievable corruption or loss of data Major application not functioning Device not scanning, or device blocking traffic Requires immediate fix or workaround	30 minutes
Two	Sub-component of a major application not functioning as documented Services degraded Major performance degradation	2 Hours
Three	Minor application not functioning as documented	4 Business Hours

Four	General usage question General information requests Feature requests	8 Business Hours
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The Contractor guarantees a next business day delivery for hardware RMA's. This will be a service level agreement monitored by the SOM for performance of the contract.

**D. Digital Incident Response Solution Requirements**

1. The system must be scalable in terms of the amount of devices that can be monitored for suspicious configurations, files and activity.
2. The DIR system or agents must have limited impact or effect on the state's production devices or network while communicating.
3. The system must be able to search both internal and external devices.
4. The DIR solution will analyze network desktop and server operating system files, memory, applications, configurations and activity events for known compromise activities.
5. The system must search and detect all desktops added to the State of Michigan's network.
6. The system will secure all data elements gathered or artifacts of compromise.
7. User authentication will be used for interface connections.
8. The system will not use shared "service" accounts with imbedded plain text passwords anywhere in the application.
9. The system will search network desktops and servers looking for defined files, configurations, evidence of malware, invalid hash values, and other threat items.
10. The system detection file(s) or definition file(s) must be customizable.
11. The system must provide global advanced risk/threat detection analysis.
12. The system must provide global remediation information.
13. The system must be integrated with external intelligence sources to update threat detection files and response information regularly.
14. The system must have configuration options to reduce the amount of false findings.
15. The system must have a configuration/process to allow prioritized client notification based on the potential impact.
16. The DIR system will have predefined mechanisms to adjust to heavy bandwidth utilization or connectivity issues and continue to report findings and correlate the results thereafter.
17. The system must evaluate and classify threats and prioritize threats.
18. Ideally the system will download timely security advisories for evolving vulnerabilities and threats. Advisories would detail countermeasures as released as well.
19. The system must implement global threat intelligence in its solution.
20. The system must include triage processing reports.
21. The system must provide the State SOC with prioritize findings so the state's security response efforts are focused on the highest risks.
22. The system must include countermeasure for handling the threat or attack.
23. The system will have the ability to generate threat trend analysis reports.
24. The reporting interface must support exporting data in PDF, CSV and other formats.
25. The system must provide a customizable system interface for monitoring and reporting.
26. The reporting interface must come with standard reports.
27. The reporting interface must support an authentication method before a user can access reports.
28. The reporting system must limit access to reports in a granular fashion.
29. The system interface must allow the state to report on threat finding metrics.
30. The reporting process must support creating reports across all devices monitored.
31. The system will search for potential compromise evidence and detect signs of malware activity, as applicable based on the predefined definition files.
32. The system must identify host based security incidents or suspect communications.

33. The system must identify open connections to possible backdoors and identify ports being used.
34. The system must identify and collect artifacts of internal systems attacking other internal systems.
35. The system must identify connections to/from known bad URLs or IP's.
36. The system must constantly update search files for new threats.
37. The system must identify anomalous traffic to/from an IP address within a registered network.
38. The system will have redundancy built in and expected Up-Time Percentage of 99.90% or better. .10% will be allowed for planned upgrades, patches and maintenance.
39. The system will provide the state with daily, weekly and monthly metrics reports.
40. The system will provide a daily threat summary report.
41. The system will provide the State with mechanisms to assist with further incident investigation and artifact collection.
42. The system will provide a secure user interface that has multiple levels of security access rights to the system.
43. The system will assist the state to identify security threats, recommend response actions and collect and document detailed incident artifacts for all internal and external desktop security incidents or attacks.
44. The DIR system will support Rapid Triage of remote desktops to prevent or stop an attack.

#### **E. DIR System Training**

The State of Michigan will require training classes for the DIR system for five (5) State employees. The class will need to cover DIR system features and configuration of them, general system administration and maintenance requirements, adding and removing additional devices to the DIR system, adding and removing user accesses to the system, creating or customizing definition search files, creating reports in the system, creating metric reports, system health checks, backup and recovery processes, notification configurations and common best practices using the system.

#### **1.200 Roles and Responsibilities**

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

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

The Contractor will provide resumes in the attached Personnel Resume templates for staff, including subContractors, who will be assigned to the Contract, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The competence of the personnel the Contractor proposes for this project will be measured by the candidate's education and experience with particular reference to experience on similar projects as described in this Statement of Work.

The Contractor will identify a **Single Point of Contact (SPOC) or Account Manager** (non-Key Personnel). The duties of the SPOC will include, but not be limited to:

- Supporting the management of the Contract,
- Facilitating dispute resolution, and
- Advising the State of performance under the terms and conditions of the Contract.
- Maintenance renewal assistance

Contractor must provide a list of all subContractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subContractor's organization and abilities.

The Contractor must submit a letter of commitment for Key Personnel (Project Manager) signed by the identified resource, stating their commitment to work for the Contractor/subContractor on this project. 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 (Key Personnel)**

The Contractor will provide a **Project Manager** to interact with the designated personnel from the State to insure a smooth installation and transition to the new system. The project manager 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 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 Contractor will provide a **Technical Lead (Non-key Personnel)** to install and setup the Digital Incident Response system and assist with initial configurations required in the one hundred twenty (120) days of the contract. The Technical Lead will work on site with the SOM Cyber Security personnel to define requirements to coordinate IT activities required to install the DIR system and make it operational in the SOM's environment. The Technical Lead will partake in knowledge sharing and guidance on search file configuration settings to utilized all DIR system functionality and assist with report customization.

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

**B. On Site Work Requirements**

**1. Location of Work**

The contract work will be performed, managed, and completed at the following locations:

- a. 515 Westshire Drive, Lansing, Michigan 48913
- b. MDOS Building, 7064 Crowner Drive, Dimondale
- c. Austin Bldg, 4th floor, 430 Allegan Street, Lansing

**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 will 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 and drug tests 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, if required by project.

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

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

Agency will specify State personnel dedicated to project, and identify their associated roles and responsibilities.

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

- Work space
- Desk
- Access to copiers and fax machine
- Phone
- Computer

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 will provide for that vision. They will 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.

Name	Agency/Division	Title	Phone/e-mail
Richard Reasner	DTMB Michigan Cyber Security	Director	517-241-4090 reasnerr@michigan.gov

**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.

Name	Agency/Division	Title
Vicki McPherson	MDTMB Risk Compliance Section	Project Manager

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

Name	Agency/Division	Title
Richard Reasner	DTMB Michigan Cyber Security	Director

**1.203 OTHER ROLES AND RESPONSIBILITIES**

Additional staff will be involved in the project and be determined by Contractor and the State Project Manager as needed during the project.

**1.300 Project Plan**

**1.301 PROJECT PLAN MANAGEMENT**

**Preliminary Project Plan**

The Contractor provided an overall Contract 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.

The Contract 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 (time expectations for SOM staff), including the organization responsible. Contractor is to 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

Note: The Final Contract Project Plan will be required as stated in Article 1, Section 1.301 (C) Project Control.

**Orientation Meeting**

Upon fourteen (14) 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 will 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 weekly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State will 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 Michigan Cyber Security.
2. Within fourteen (14) 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. Necessary substitutions due to change of employment status and other unforeseen circumstances may only 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 will 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 fifteen (15) 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**

Reporting formats must be submitted to the State's Project Manager for approval within thirty (30) business days after the execution of the contract resulting from this CONTRACT. Once both parties have agreed to the format of the report, it will become the standard to follow for the duration of the contract. During installation and configuration of the DIR system these reports will be reviewed at the weekly status meetings, there after they will be reviewed monthly or as often as the Project Manager requests them during the maintenance period.

- Weekly Project status
- Updated project plan
- Project Issue Log
- Project Risk Log
- Change Control

**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 will be escalated for resolution from level 1 through level 3 for SOM and Contractor, 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 will 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 will 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. Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk 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 five (5) business days for review by the State of Michigan.
- 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 in accordance with the acceptance criteria defined in section 1.501 have been completed and approved in writing by the DTMB Project Manager.
- The installed DIR system passed testing and performs all the functions defined in E. Digital Incident Response Solution Requirements.
- Completion of Lessons Learned document with DTMB Project Manager
- Project Close Out

### 1.600 Compensation and Payment

#### 1.601 COMPENSATION AND PAYMENT

This will be a firm, fixed price Contract based on the following deliverables

- A. Payment – #1 - 60% of total first year contract amount after signature and approval of the State Project Manager
  - a. Deliverable 1.104 A – Business Requirements
  - b. Deliverable 1.104 B – System Design

- c. Deliverable 1.104 C – Implementation – Installation Plan
  - d. Deliverable 1.104 C – Implementation – Initial Installation and successful operation for 14 calendar days.
- B. Payment #2 – 40% of total amount for the first year contract with signed approval of the State Project Manager after the system configurations are completed and stable within the 120 day deliverable time frame referenced in 1.104.

**Method of Payment**

The first year's payment will be made as indicated above. Additional years will be paid annually at the beginning of the contract/option year.

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

Extended purchasing program volume requirements are not included, unless stated otherwise.

**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, if 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.

Contractor will send notice to the State's MDTMB Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect. If the Contractor lowers its LIST prices, then the SOM will receive future price benefit for new product purchases and support renewals.

**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.

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

**Article 2, Terms and Conditions**

**2.000 Contract Structure and Term**

**2.001 CONTRACT TERM**

This Contract is for a period of five (5) years beginning in January 13, 2015 through January 12, 2020. 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, will 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 two (2) additional one (1) year periods.

**2.003 LEGAL EFFECT**

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

Except as otherwise agreed in writing by the parties, the State will not be liable for costs incurred by Contractor or payment under this Contract, until Contractor 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, or Direct Voucher 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 Contractor 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 will take precedence (as to that Statement of Work only), provided, however, that a Statement of Work may not

modify or amend the terms of the Contract. 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, and Procurement (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. 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

Email: BreenM@michigan.gov  
Phone: 1-517-241-7720

**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:

Richard Reasner, Director of Michigan Cyber Security  
Department of Technology, Management and Budget  
515 Westshire Drive, Lansing, MI 48913  
Reasnerr@michigan.gov  
Phone: (517) 241-4090  
Fax: (517) 241-2013

**2.023 PROJECT MANAGER**

The following individual will oversee the project:

Richard Reasner, MCS Director  
Department of Technology, Management and Budget  
515 Westshire Drive, Lansing, MI 48913  
Reasnerr@michigan.gov  
Phone: (517) 241-4090  
Fax: (517) 241-2013

**2.024 CHANGE REQUESTS**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, Contractor will 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 Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly before commencing performance of the requested activities it believes are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice will be conclusively considered to be in-scope Services/Deliverables and not New Work.

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

- (1) **Change Request at State Request**  
If the State requires Contractor 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 Contractor (a "Change"), the State will submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").
- (2) **Contractor Recommendation for Change Requests:**  
Contractor will be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.
- (3) Upon receipt of a Change Request or on its own initiative, Contractor will examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and will submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will 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 will apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it will communicate its opinion to the State but will nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (4) By giving Contractor written notice within a reasonable time, the State will be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under 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 will 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 Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

#### 2.025 NOTICES

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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:

**Delivery or Courier**

State of Michigan  
DTMB-Procurement  
Attention:  
1<sup>st</sup> Floor, Constitution Hall  
525 West Allegan  
Lansing, Michigan 48933-1502

**United States Postal Service**

State of Michigan  
DTMB-Procurement  
Attention:  
PO Box 30026  
Lansing, MI 48909-7526

Contractor:

FireEye, Inc.  
ATTN: General Counsel – Contracts  
1440 McCarthy Blvd.

Milpitas, CA 95035

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

**2.026 BINDING COMMITMENTS**

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

**2.027 RELATIONSHIP OF THE PARTIES**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its SubContractors will be deemed to be an employee, agent or servant of the State for any reason. Contractor will 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 will act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will 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 Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the 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.

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

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

**2.030 General Provisions**

**2.031 ADMINISTRATIVE FEE AND REPORTING**

The Contractor must remit an administrative fee of 1% on all payments remitted to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Contractor 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 will 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 fees 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 Contract or project to which it relates will not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

#### **2.033 CONTRACT DISTRIBUTION**

DTMB-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

#### **2.034 PERMITS**

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

#### **2.035 WEBSITE INCORPORATION**

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

#### **2.036 FUTURE BIDDING PRECLUSION**

Contractor acknowledges that, to the extent 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 Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

#### **2.037 FREEDOM OF INFORMATION**

All information in any proposal submitted to the State by Contractor and 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**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will 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 will specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor will 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 will negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

**2.043 SERVICES/DELIVERABLES COVERED**

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

**2.044 INVOICING AND PAYMENT – IN GENERAL**

- (a) Each Statement of Work issued under this Contract will list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will 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 will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with Section 1.600.
- (c) Correct invoices will 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.
- (d1) All invoices will reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Procurement, Department of Technology, Management and Budget. This activity will 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 Contractor(s) will mutually agree upon. The schedule will show payment amount and will reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements will be forwarded to the designated representative by the 15th day of the following month.

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

**2.045 PRO-RATION**

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

**2.046 ANTITRUST ASSIGNMENT**

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

**2.047 FINAL PAYMENT**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract will constitute a waiver of all claims by Contractor 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. Contractors 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 will provide that payment will be made by electronic fund transfer (EFT).

**2.050 Taxes**

**2.051 EMPLOYMENT TAXES**

Contractor will collect and pay all applicable federal, state, and local employment taxes, including the taxes.

**2.052 SALES AND USE TAXES**

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

**2.060 Contract Management**

**2.061 CONTRACTOR PERSONNEL QUALIFICATIONS**

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

**2.062 CONTRACTOR KEY PERSONNEL**

- (a) The Contractor must provide the 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 will 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, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will 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 will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning 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) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

**2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST**

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

**2.064 CONTRACTOR PERSONNEL LOCATION**

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

**2.065 CONTRACTOR IDENTIFICATION**

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

**2.066 COOPERATION WITH THIRD PARTIES**

Contractor agrees to cause its personnel and the personnel of any SubContractors to cooperate with the State and its agents and other Contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other Contractors reasonable access to Contractor's Project

personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

**2.067 CONTRACT MANAGEMENT RESPONSIBILITIES**

Contractor will be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor will 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. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor'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 Contractor will provide the Services/Deliverables directly or through its affiliates, subsidiaries, subContractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, will be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

**2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES**

The Contractor will 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 Contractor**

**2.071 CONTRACTOR FULL RESPONSIBILITY**

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

**2.072 STATE CONSENT TO DELEGATION**

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

**2.073 SUBCONTRACTOR BOUND TO CONTRACT**

In any subcontracts entered into by Contractor for the performance of the Services, Contractor will require the SubContractor, to the extent of the Services to be performed by the SubContractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any SubContractor will be the responsibility of Contractor, and

Contractor will remain responsible for the performance of its SubContractors to the same extent as if Contractor had not subcontracted such performance. Contractor will make all payments to SubContractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any SubContractor engaged by Contractor to perform any obligation under this Contract will not relieve Contractor 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, Contractor will 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 Contractor will 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 will 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 Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor will have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

**2.090 Security**

**2.091 BACKGROUND CHECKS**

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

**2.100 Confidentiality**

#### 2.101 CONFIDENTIALITY

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

#### 2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION

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

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

#### 2.103 RESERVED

#### 2.104 EXCLUSIONS

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

#### 2.105 NO IMPLIED RIGHTS

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

**2.106 SECURITY BREACH NOTIFICATION**

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

**2.107 RESPECTIVE OBLIGATIONS**

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

**2.110 Records and Inspections**

**2.111 RESERVED**

**2.112 RETENTION OF RECORDS**

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

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

**2.113 EXAMINATION OF RECORDS**

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

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract will be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

**2.114 AUDIT RESOLUTION**

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

**2.115 ERRORS**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance

remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

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

2.120 Warranties

**2.121 WARRANTIES AND REPRESENTATIONS**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The Contractor warrants it will provide the Services in a professional and workmanlike manner consistent with good industry standards and practices. As the State's sole remedy and Contractor's entire liability for any breach of the foregoing warranty, Contractor will re-perform, in a conforming manner, any nonconforming Services that are reported to Contractor by the State in writing within sixty (60) days after the date of completion of such Services.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State will knowingly infringe the patent, copyright, trade secret, or other proprietary rights of any third party. Contractor's liability and the State's sole remedy with respect to any such infringement are as stated in Section 2.140, Indemnification.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under 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.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to 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.

- (l) 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.
- (m) 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 and warrants 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.
- (n) 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.

**2.122 RESERVED**

**2.123 RESERVED**

**2.124 WARRANTY OF TITLE**

Contractor will, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor will be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge.

**2.125 PRODUCT WARRANTIES AND SUPPORT**

**Hardware Warranty.** Contractor warrants to the State that during the one (1) year period following installation of the Products, the Hardware will perform substantially in accordance with the applicable FireEye Product Documentation.

**Media Warranty.** If Contractor provides the State tangible media for the Software, Contractor warrants that the media upon which the Software is recorded will not be defective under normal use for a period of ninety (90) days from delivery. Contractor will replace any defective media returned to it within the warranty period at no charge to the State.

**Software Warranty.** Contractor warrants to the State that during the one (1) year period following installation of the Products, the Software will perform substantially in accordance with the applicable FireEye Product Documentation.

When ordered and in accordance with the Contractor's Support Terms, Contractor is responsible under this Contract for maintaining equipment/system(s) in good operating condition in material accordance with the FireEye Product Documentation for the period specified in this Contract. Upon determination that hardware is defective, Contractor commits to shipping a replacement product, of equal or better condition, within one (1) business day, FOB Destination.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians. The Contractor is the sole point of contact for warranty service.

**2.126 EQUIPMENT TO BE NEW**

If applicable, all equipment provided under this Contract by Contractor will be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or the other, unless specifically agreed otherwise in writing by the State. For the purposes of clarity, Contractor will deliver new equipment for the initial installation; equipment delivered as replacement for a failure will be of equal or better condition as the equipment being replaced.

#### 2.127 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, will be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order pursuant to Section 2.024.

#### 2.128 CONSEQUENCES FOR BREACH

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

#### 2.130 Insurance

##### 2.131 LIABILITY INSURANCE

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

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

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

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

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

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

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

(g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.

(h) The Contractor must provide, within five (5) business days, written notice to the Director of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.

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

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

(k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at

least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

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

(i) Commercial General Liability

Minimal Limits:

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

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

The Products/Completed Operations sublimit requirement may be satisfied by evidence of the manufacturer's Commercial General Liability Insurance. The manufacturer 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 and must provide evidence that the policy contains a waiver of subrogation by the insurance company.

(ii) Umbrella or Excess Liability

Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

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

(iii) Motor Vehicle

Minimal Limits:

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

(iv) Hired and Non-Owned Motor Vehicle Coverage

Minimal Limits:

\$1,000,000 Per Incident

Additional Requirements:

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

(v) Workers' Compensation

Minimal Limits:

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

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

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

(vi) Employers Liability

Minimal Limits:

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

Additional Requirements:

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

(vii) Employee Fidelity (Crime)

Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

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

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

(viii) Professional Liability (Errors and Omissions)

Minimal Limits:

\$3,000,000 Each Occurrence  
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$50,000 Per Loss

(ix) Cyber Liability

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

**Additional Requirements:**

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

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

(x) **Property Insurance**

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

**2.132 SUBCONTRACTOR INSURANCE COVERAGE**

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

**2.133 CERTIFICATES OF INSURANCE**

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

**2.140 Indemnification**

**2.141 GENERAL INDEMNIFICATION**

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

**2.142 CODE INDEMNIFICATION**

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

**2.143 EMPLOYEE INDEMNIFICATION**

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

#### **2.144 PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION**

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

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

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

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

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

#### **2.146 INDEMNIFICATION PROCEDURES**

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

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

- demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

### **2.150 Termination/Cancellation**

#### **2.151 NOTICE AND RIGHT TO CURE**

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

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

- (a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (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 Contractor 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 the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of 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 Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in 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 Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. 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) Contractor 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 Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or 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 will 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 Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

**2.155 TERMINATION FOR CRIMINAL CONVICTION**

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

**2.156 TERMINATION FOR APPROVALS RESCINDED**

The State may terminate 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 will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

**2.157 RIGHTS AND OBLIGATIONS UPON TERMINATION**

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

- settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
  - (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under 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 Contractor**

##### **2.161 TERMINATION BY CONTRACTOR**

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor 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 Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under Section 2.160 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 will comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If 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 thirty (30) days. These efforts must include, but are not limited to, those listed in Section 2.150.

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

The Contractor will 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 CONTRACTOR INFORMATION TRANSITION**

The Contractor will 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 CONTRACTOR SOFTWARE TRANSITION**

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

**2.175 TRANSITION PAYMENTS**

Except for transition activities following a termination for the Contractor's breach, 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 STATE TRANSITION RESPONSIBILITIES**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations upon which the State and the Contractor agree.

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

**2.180 Stop Work**

**2.181 STOP WORK ORDERS**

The State may, at any time, by written Stop Work Order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order must be identified as a Stop Work Order and must indicate that it is issued under this Section. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.182.

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

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

**2.183 ALLOWANCE OF CONTRACTOR COSTS**

If the Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated for reasons other than material breach, the termination will be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. For the avoidance of doubt, the State will not be liable to Contractor 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 Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

**2.192 INFORMAL DISPUTE RESOLUTION**

(a) All disputes between the parties will 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 Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives will 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 will 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 will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(4) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, will 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 will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193.

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

**2.193 INJUNCTIVE RELIEF**

A claim between the State and the Contractor 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, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Contractor 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 will not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, will not enter into a contract with a SubContractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the SubContractor, manufacturer or supplier of Contractor appears in the register.

**2.203 WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

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

**2.204 PREVAILING WAGE**

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

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

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

**2.210 Governing Law**

**2.211 GOVERNING LAW**

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

**2.212 COMPLIANCE WITH LAWS**

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

**2.213 JURISDICTION**

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

**2.220 Limitation of Liability**

**2.221 LIMITATION OF LIABILITY**

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

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

**2.230 Disclosure Responsibilities**

**2.231 DISCLOSURE OF LITIGATION**

Contractor will disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each SubContractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley

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

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 Contractor (or a SubContractor) to continue to perform this Contract according to its terms and conditions, or
- (b) whether Contractor (or a SubContractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (1) Contractor 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) Contractor and its SubContractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor will make the following notifications in writing:
  - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
  - (2) Contractor will also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
  - (3) Contractor will also notify DTMB-Procurement within 30 days whenever changes to company affiliations occur.

#### **2.232 CALL CENTER DISCLOSURE**

Contractor and/or all subContractors involved in the performance of this Contract providing call or contact center services to the State will disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

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

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

**2.240 Performance**

**2.241 TIME OF PERFORMANCE**

- (a) Contractor will 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, Contractor will notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

**2.242 SERVICE LEVEL AGREEMENT (SLA)**

Article 1, Section 1.104 C and Contractor's Support Terms identify the standards and timelines for responding to requests for service, up to and including replacement of defective hardware.

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

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

#### **2.250 Approval of Deliverables**

Sections 2.251, 2.252 and 2.253 shall apply solely to "Custom Software Deliverables" that may be developed under an individual, mutually-agreed upon Statement of Work between State of Michigan and the Contractor. The DIR COTS System to be delivered under the base contract award is itself a Commercial-Off-The-Shelf system and does not involve "Custom Software Deliverables". Approval of Written Deliverables shall be governed by Section 2.254 below.

#### **2.251 DELIVERY OF DELIVERABLES**

A list of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable is attached, if applicable. All Deliverables will be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, Contractor will certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

In discharging its obligations under this Section, Contractor will be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

#### **2.252 CONTRACTOR SYSTEM TESTING**

Contractor will be responsible for System Testing each Custom Software Deliverable in Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. Contractor's System Testing will include the following, at a minimum, plus any other testing required by CMM Level 3 or Contractor's system development methodology:

Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application as the Application will be incorporated within the State's computing environment. The State will participate in and provide support for the Business Function Testing to the extent reasonably requested by Contractor. Within ten

(10) days before the commencement of Business Function Testing pursuant to this Section, Contractor will provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to this Section, Contractor will provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State will be entitled to observe or otherwise participate in testing under this Section as the State may elect.

#### **2.253 APPROVAL OF DELIVERABLES, IN GENERAL**

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. 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.

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

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State will be provisional; that is, such approval will not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to Section 2.080.

#### **2.254 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, will 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 will be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). 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 RESERVED

2.262 RESERVED

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

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

**2.264 OWNERSHIP OF MATERIALS**

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

2.270 State Standards

**2.271 EXISTING TECHNOLOGY STANDARDS**

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

**2.272 ACCEPTABLE USE POLICY**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see [http://michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

**2.273 SYSTEMS CHANGES**

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

**2.274 ELECTRONIC RECEIPT PROCESSING STANDARD**

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

**2.280 Extended Purchasing Program**

**2.281 EXTENDED PURCHASING PROGRAM**

The Contract will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon mutual written agreement between the State of Michigan and the Contractor, this Contract may be extended to (a) State of Michigan employees, or (b) other states (including governmental subdivisions and authorized entities).

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

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

**2.290 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 Contractor 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, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials 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 Contractor will 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 will provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State will advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor will immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State will order a suspension of Work in writing. The State will proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State will terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor will resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor will 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 Contractor will 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 - Contractor will establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs will 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 RESERVED

2.301 RESERVED

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**2.302 RESERVED**

**2.310 Software Warranties**

**2.311 PERFORMANCE WARRANTY**

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of (90) ninety days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

**2.312 NO SURREPTITIOUS CODE WARRANTY**

The Contractor represents and warrants that no copy of licensed Software provided to the State knowingly contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not mean features to prevent use inconsistent with the license. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

**2.313 CALENDAR WARRANTY**

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or will include, at no added cost to the State, design and performance so the State will not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, will include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 will be correctly treated as a leap year within all calculation and calendar logic.

**2.314 THIRD-PARTY SOFTWARE WARRANTY**

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor will provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice will include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

**2.315 PHYSICAL MEDIA WARRANTY**

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than (30) thirty days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State will be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

**Attachment 1 – Cost Tables – Best and Final Offer**

FireEye Best and Final Offer Price Table

Table A1 – First Year DIR Software, Hardware, Labor Cost

Device Category	Qty	Unit Price	Specifications	Extend Price	Comments
Software	Support for 59K nodes.		Mandiant for Intelligent Response v3.x Software HX Endpoint Agent	\$541,808	
Device License (if separate from software/application)					
Appliance (if required)	8 X MIR Appliances 4 HX Appliances		Primary Appliance, Mandiant for Intelligent Response, Revision F Hardware, (1 for first 10,000 nodes). With Mandiant Branding.  Additional Appliance, Mandiant for Intelligent Response, Revision F Hardware. With Mandiant Branding. HW-4000 HX HW-4000D HX DMZ	\$59,520	
Installation Cost			5 Days; includes 1 Mandiant Customer Success Product Specialist	\$33,750	

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			performing knowledge transfer and assistance to accelerate customer proficiency with the MIR platform. Price includes travel and expenses within the continental United States. HX Endpoint- ADV Jumpstart		
Customization Cost			Basic Reporting Customization Subject to Post Award Scoping Discussion	\$56,430	
On-going System Support			Annual Maintenance and Support for the Following (Platinum Priority Plus* Level) ->59K endpoints-> Mandiant for Intelligent Response (MIR) software, 7x MIR Controllers, 59K Endpoints HX software, 2x HX 4000 Controllers, 1x 4000D HX DMZ controllers	\$159,650.72	
SME On-site					
Other – Please List - Training - Shipping - MIR Threat Feed			Advanced MIR training class - Onsite, 2 days Enterprise Incident Response With MIR	\$30,000 \$2,400 \$0	

		training class CONUS + Canada. Four days, on-site class, Customer provides location in the continental U.S. Excludes AK, HI, PR. MANDIANT provides laptops. Class size: 4 to 12 students. Mandiant Intelligence Threat Feed for Mandiant Platform Products		
<b>Total First Year Cost</b>			<b>\$883,558.72</b>	

**Table B1 – First Contract Year DIR Deliverable Payment**

Line	Deliverable	Total Cost	% Payment	Total
1	First Year Total Cost A1	\$883,558.72		
2	Payment 1 upon completion and sign-off by State Project Manager a. Deliverable 1.104 A – Business Requirements b. Deliverable 1.104 B – System Design c. Deliverable 1.104 C – Implementation – Installation Plan d. Deliverable 1.104 C – Implementation – Initial Installation		60% of Line 1	\$530,135.23
3	Payment 2 upon completion and sign-off by State Project Manager a. Deliverable 1.104 C – Implementation – Customization and continued system support service		40% of Line 1	\$353,423.49
	<b>Total Cost</b>		<b>100 %</b>	<b>\$883,558.72</b>

Table B2 – DIR Maintenance Cost Year, 2, 3, 4, 5, option year 1 and 2 System License & Support Service Cost

Year	Deliverable	Total Cost
1	Contract year 1 Total Cost	\$883,558.72
2	Contract year 2 License Cost	
	Contract year 2 Support Cost	\$159,650.72
	Contract Year 2 Total Cost	\$159,650.72
3	Contract year 3 License Cost	
	Contract year 3 Support Cost	\$159,650.72
	Contract Year 3 Total Cost	\$159,650.72
4	Contract year 4 License Cost	
	Contract year 4 Support Cost	\$159,650.72
	Contract Year 4 Total Cost	\$159,650.72
5	Contract year 5 License Cost	
	Contract year 5 Support Cost	\$159,650.72
	Contract Year 5 Total Cost	\$159,650.72
6	Option year 1 License Cost	
	Option year 1 Support Cost	\$159,650.72
	Option year 1 Total Cost	\$159,650.72
7	Option year 2 License Cost	
	Option year 2 Support Cost	\$159,650.72
	Option year 2 Total Cost	\$159,650.72
	Total Cost	\$1,841,463.04

**Attachment 2 – HX and MIR EULA and Support Terms**



**END USER LICENSE AGREEMENT AND SUPPORT TERMS FOR FIREEYE HX SERIES PRODUCTS  
AND MANDIANT FOR INTELLIGENT RESPONSE® (MIR®) UNDER STATE OF MICHIGAN  
CONTRACT NO. 071B5500041**

This End User License Agreement ("Terms") govern HX and MIR provided by FireEye, Inc. ("FireEye") to the Customer ("Customer" or "you") pursuant to State of Michigan Contract No. 071B5500041 (the "Contract") to which these Terms are attached. In the event of a conflict between these Terms and the Contract, the Contract shall prevail and govern. The Contract and purchase order (the "Order"), together with these Terms and any mutually agreed-upon addenda, exhibits, amendments or Statements of Work (defined below) that reference these Terms form the "Agreement" under which FireEye will provide the Product. Customer and FireEye may be referenced in the Agreement individually as a "Party" and collectively as the "Parties."

**DEFINITIONS.** In the Agreement, capitalized terms have the meaning given to them below. Additional capitalized terms may be defined throughout the Agreement, including on the Order.

- 1.1 "All Hosts Report" means a report generated by the Product that specifies the number of Nodes on which the Agent Software is installed.
- 1.2 "Conversion License" means a license to increase the number of Nodes on which the Agent may be installed to the number specified in the Conversion License.
- 1.3 "Hardware" means any computing device provided by FireEye as part of the Product.
- 1.4 "Indicators of Compromise" or "Indicators" means a set of data provided by FireEye for use with the Product. Indicators are specifications of anomalies, configurations, or other conditions that the Product is capable of identifying within an information technology infrastructure.
- 1.5 "Nodes" means computing devices that Customer owns or controls, on which the Agent is or will be installed.
- 1.6 "Product" means the combination of software and hardware components that make up FireEye for Security Operations, including without limitation a software based "Agent" for data collection, a hardware appliance, and software that provides command, control, storage, and analysis capabilities for the Product.
- 1.7 "Software" means any software or firmware provided by FireEye to Customer as part of the Product, including without limitation all updates, patches and revisions thereto.
- 1.8 "Support Services" means the Product support services described in Section 3.
- 1.9 "Training" means training services provided by FireEye related to the Product, as described in Section 3.

**2 LICENSES AND RESTRICTIONS.**

**2.1 Product License.** Subject to the rights and restrictions set forth in the Agreement, FireEye grants Customer a limited, non-exclusive right, with respect to each Product identified on the Order: (i) to install the Agent component of the Product on the number of Nodes stated on the Order; and (ii) to use the Product listed in the Order, as described in the Agreement and any applicable documentation for the Product.

**2.2 Conversion License.** With respect to each Product, if you wish to increase the number of Nodes on which the Agent can be installed, then notify FireEye of that proposed increase, and you may obtain from FireEye a Conversion License at FireEye's then-current rates. Agents may be installed only on the number of Nodes specified on the Order at any given time. FireEye may request All Hosts Reports from you, and you will provide those All Hosts Reports and certify that each All Hosts Report is true and accurate as of the date it is provided to FireEye. Each All Hosts Report will be generated no more than twenty-four hours from the time of FireEye's request. If an All Hosts Report indicates that the number of Agents installed on Nodes exceeds the authorized number of Agents authorized to be installed, then FireEye will notify you, and the Parties will discuss the All Hosts Report in good faith. If, after such discussions, FireEye determines that you have exceeded the authorized number of Agent installations, then FireEye will notify you, and FireEye will issue an invoice for a Conversion License at FireEye's then-current rates, such invoice to be paid according to these Terms. If you do not pay FireEye's invoice for the Conversion License as set forth in these Terms, then without prejudice to any other rights or remedies available to FireEye, FireEye may terminate the Agreement under Section 4.1(b). Conversion Licenses become effective immediately and will be retroactive to the date the number of authorized Nodes was exceeded, without further action on the part of either Party.

**2.3 Indicator License.** FireEye grants to Customer a limited, non-exclusive right, during the Support Term, to use the Indicators provided by FireEye solely in connection with the Product. You may not use Indicators with any third-party product or service. Indicators are provided for download via FireEye Customer Support Forums. FireEye delivers Release and Beta Indicators to the Customer Support Forums once per month. Issues with testing, validation, and aggregation may create occasional delays with the delivery of updates, and FireEye will notify you of any such delays through the FireEye Customer Support Forums. You will provide adequate security controls to prevent unauthorized dissemination of Indicators. You are expressly prohibited from distributing Indicators to third parties unless required by law. If you create your own indicators of compromise, you will own all right, title and interest in and to those indicators, and you may use those indicators in connection with the Product at your own risk.

**2.4 Versions.** The licenses in Sections 2.1-2.2 apply only to the version of the Product that FireEye delivers to you under the Order.

**2.5 Proprietary Rights & Restrictions.** FireEye and its licensors retain all right, title and interest in and to the Product, the Indicators, and all copies thereof, and no title to the Product or Indicators or any intellectual property or other rights therein are transferred by virtue of the Agreement other than as specified herein. The Product are protected by patents, copyrights, and trade secrets belonging to FireEye and its licensors, and the Indicators are trade secrets of FireEye and subject to copyright. You will not use the Product or Indicators for any purpose other than for your own internal business purposes. You may make copies of the Product documentation for your internal use only, and all such copies are the property of FireEye. You will ensure that all proprietary rights notices on associated documentation are reproduced and applied to any copies. You will not to cause or permit the reverse engineering, disassembly, or reverse compilation of the Product, or otherwise attempt to derive source code from the Product. You may not create derivative works based upon all or part of Product or Indicators. You may not transfer, lend, lease, assign, or sublicense the Product or Indicators, and may not make any part of the Product or Indicators available to any third party through timesharing or otherwise. You will not resell or redistribute the Product or indicators and will not use the Product or Indicators to provide services to any third party.

**2.6 Additional Software.** Some features of the Product operate best when used in connection with FireEye's Redline™ software, which is available for free download at [www.mandiant.com/resources/download/redline](http://www.mandiant.com/resources/download/redline). The Redline software is subject to an End User License Agreement available when you download that software. Your use of the Redline software constitutes your agreement to the Redline End User License Agreement. You

are not required to download or use the Redline software, but FireEye recommends using the Redline software in connection with the Product to optimize performance.

### 3.0 SUPPORT SERVICES, TRAINING

**3.1 Support Services.** FireEye will provide Support Services as set forth below during the Support Term. Support Services do not guarantee uninterrupted or error-free operation of Product.

- Telephone Support: 24x7x365 telephonic support via on-call notification, with a response within the Support Response Time below
- E-mail Support: 24x7x365 with a response within the Support Response Time below
- Support Portal Access: 24 x 7 credentialed access to FireEye's online support portal, subject to scheduled downtime and outages with an aggregate 99% uptime
- Issue Tracking & Escalation
- Help & User Documentation Access
- Technical Alert Notices: As issued on a when and if available basis
- Security Alert Notices: As issued on a when and if available basis
- Software Patches: Software patches as issued on a when and if available basis
- Support Response Time: Within four (4) hours
- Repair/Replacement: Shipped within one (1) business day\*

\* You will be issued a Return Material Authorization (RMA) number for return of the unit(s) and/or component(s) to FireEye within five (5) calendar days of receipt of the replacement unit or component. Failure to do so will result in FireEye invoicing for the full retail price of the replacement unit or component. You are responsible for installation and configuration of any and all replacement units and component(s).

**3.2. Software Patches.** FireEye will provide patches to the Software at no additional charge, provided you are in good standing with the terms of the Agreement, if and when FireEye makes such patches available generally to its customers, as FireEye deems necessary to maintain the version of the Product licensed to you hereunder.

**3.3. End of Life.** FireEye reserves the right to declare any version of Product "End of Life" ("EOL"), and will provide notification to you when FireEye makes an EOL declaration. FireEye will continue to provide Support Services for Products declared EOL for the current Support Term or twelve (12) months after the date of EOL declaration (the "EOL Support Term"), whichever is longer, provided Customer is in good standing with the terms of the Agreement. FireEye will have no obligation to support any Product declared EOL after the end of the EOL Support Term, although the License Term with respect to any such Product will continue until terminated as set forth in Section 4.1.

**3.4. Training.** If Training is listed on the Order, FireEye will provide training specified on the Order at mutually agreed-upon dates and times. Training will cover the topics specified in course documentation provided by FireEye.

### 3.5. Support Service Exclusions

(a) If anyone other than FireEye personnel (or third parties under FireEye's direction) repair, modify or attempt to perform any maintenance service on any item of Product, and as a result, additional support services are required to restore the Product to operating condition, then FireEye will provide that additional support at its then-current hourly rates.

(b) The following are not included in Support Services. This list is not comprehensive, and other services not specified below may also be excluded. Excluded services may be provided at FireEye's then-current hourly rates.

- Electrical work external to Product.
- Repair of damages, defects or malfunctions (due to any cause external to Product) adversely affecting the Product's operability or serviceability, including, but not limited to, fire, flood, water, wind, lightning and transportation, or due to accident, abuse, neglect, misuse, tampering, or any act of God.
- Repair of non-conforming or damaged Product caused by failure to provide a suitable installation environment including without limitation the failure to provide adequate electrical power, heating, ventilation, and air conditioning, and failing to use the Product in accordance with applicable Product documentation.
- Repair of non-conforming or damaged Product caused by the use of the Product for purposes other than normal and intended use, from using accessories or supplies not approved by FireEye, or from modification or replacement (other than by FireEye) of any components on any boards supplied with the Product.
- Installing software or accessories onto or into the Product, painting or refinishing the Hardware, or removing approved accessories, attachments or other devices except as set forth herein.
- Consulting services that are otherwise provided by FireEye, including those pertaining the interpretation of data collected by the Product for purposes of incident response, digital investigation, or analysis.

#### 4.0 LICENSE TERM AND TERMINATION

**4.1 License Term and Termination.** (a) Term. The term of the license granted in Section 2.1 will begin on the Order Effective Date and continue until terminated as set forth in Section 4.1(b) below (the "License Term"). (b) Termination of Agreement. FireEye may terminate the Agreement and the license(s) granted in Sections 2.1-2.3 upon written notice if you violate any provision of the Agreement, including without limitation confidentiality or payment terms, and fail to cure the violation within thirty (30) days after the date FireEye notifies you of the violation. The termination of the Agreement and/or the license(s) shall be in addition to and not in lieu of any equitable remedies available to FireEye. You may terminate the Agreement and/or the license(s) granted herein at any time upon written notice to FireEye. Termination of the Agreement and/or the license(s) granted herein will not relieve you of any accrued payment obligations.

**4.2 Support Services Term and Termination.** (a) Term. Support Services shall be provided for one (1) year, or longer if stated on the Order, from the Order Effective Date (the "Initial Support Term"). Support Services will automatically renew at the end of the Initial Support Term for additional periods of one (1) year each (each a "Renewal Support Term," and together with the Initial Support Term, the "Support Term") unless terminated by either Party by written notice to the other no less than sixty (60) calendar days prior to the end of the then-current Term. You may re-establish Support Services after termination of the Support Term by notifying FireEye that you wish to re-establish Support Services and paying the amount that would have been due for Support Services from the date of the most recently lapsed Support Term through the date of your notification. (b) Termination of Support Services. FireEye reserves the right to terminate or suspend Support Services, upon written notice, if you or your employees violate any provision of the Agreement, including without limitation confidentiality or payment terms, and fail to cure the breach within thirty (30) days after the date FireEye notifies you of the violation. If Support Services are terminated or are not renewed under this Section 4.2, the remainder of the Agreement, and the licenses granted hereunder, will continue until terminated pursuant to Section 4.1.

**4.3 Consequences of Termination.** Within five (5) days after termination of the Agreement, you will return the Product, the Product documentation and the Indicators to FireEye, and FireEye will have the right to immediate possession of the Product and Indicators.

**4.4. Survival.** Sections 1, 2.6 and 4.3 will survive termination or expiration of the Agreement. Subject to Customer's timely payment of applicable fees, and subject to the terms of this Agreement, Customer shall have a perpetual, non-exclusive, nontransferable, right and license to (unless otherwise set forth in a Statement of Work) use, display and reproduce the Reports for its internal business purposes.

**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.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DIR	Digital Incident Response
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.
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 bidders
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
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.
SOC	Security Operations Center
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.