

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 2
 to
 CONTRACT NO. 071B3200101
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
HP Enterprise Services, LLC 6015 W. St. Joseph Hwy 48917	Cathy Scarpaci	cathy.scarpaci@hpe.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(586) 260-8894	*****2737

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Karen Bearman	(517) 335-0704	BearmanK@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	David Hatch	(517) 284-7044	Hatchd@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: DTMB Disaster Recovery Services

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 1, 2013	May 31, 2016	4 - 1 Year	May 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		05-31-2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$ 642,047.40		\$ 214,015.80	align="center">\$856,063.20	

DESCRIPTION: Effective 05/17/2016, the following changes are hereby incorporated into the contract:

- Update Program Manager : Karen Bearman replaces Russell Strassburg
- Update Vendor Primary Contact: Cathy Scarpaci replaces Jamie Trierweiler
- Exercise first option year, new revised expiration date 05-31-2017
- Add \$214,015.80 to pay for 12 months of invoicing, at a rate of \$17,834.65 per month. Pricing will remain the same as set per cost tables provided in Attachment A. Ad Board approval date 05/17/2016

All other terms, conditions, specifications and pricing remain the same. Per (DTMB) contractor (request/proposal) and agency (request) agreement, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B3200101
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Hewlett-Packard State & Local Enterprise Services, Inc. 6015 West St. Joseph Hwy Suite 101 Lansing, MI 48917	Jamie Trierweiler	Jamie.Trierweiler@hp.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 392-3314	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Russell Strassburg	(517) 335-0704	StrassburgR@michigan.gov
BUYER	DTMB	Steve Motz	(517) 241-3215	MotzS@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: DTMB Disaster Recovery Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
6/1/2013	5/31/2016	4 One-Year	5/31/2016
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	N/A	5/31/2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$12,000.12		\$642,047.40		

Effective immediately the Estimate Aggregate Contract Value is increased by \$12,000.12 to \$642,047.40. This change corrects the Aggregate Contract Value to match the amounts of the tables provided in Attachment A.

All other terms, conditions, specifications and pricing remain unchanged.

Per vendor agreement and DTMB Procurement approval.



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

June 13, 2003

**NOTICE
 OF
 CONTRACT NO. 071B3200101**
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Hewlett-Packard State & Local Enterprise Services, Inc. 6015 West St. Joseph Hwy Suite 101 Lansing, MI 48917	Jamie Trierweiler	Jamie.Trierweiler@hp.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-392-3314	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Russell Strassburg	(517) 335-0704	StrassburgR@michigan.gov
BUYER:	DTMB	Steve Motz	(517) 241-3215	motzs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
DTMB Disaster Recovery Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
36 Months	6/1/2013	5/31/2016	Four One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$630,047.28

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #084R2200142. Orders for delivery will be issued directly by the Department of Technology, Management and Budget through the issuance of a Purchase Order Form.

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

CONTRACT NO. 071B3200101
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Hewlett-Packard State & Local Enterprise Services, Inc. 6015 West St. Joseph Hwy Suite 101 Lansing, MI 48917	Jamie Trierweiler	Jamie.Trierweiler@hp.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-392-3314	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Russell Strassburg	(517) 335-0704	StrassburgR@michigan.gov
BUYER:	DTMB	Steve Motz	(517) 241-3215	motzs@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
DTMB Disaster Recovery Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
36 Months	6/1/2013	5/31/2016	Four One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$630,047.28	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #084R2200142. Orders for delivery will be issued directly by the Department of Technology, Management and Budget through the issuance of a Purchase Order Form.

Notice of Contract #:071B3200101

FOR THE CONTRACTOR:

**Hewlett-Packard State & Local Enterprise
Services, Inc.**

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB, Procurement

Enter Name of Agency

Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Procurement

Contract No. #071B3200101
DTMB Disaster Recovery Services

Buyer Name: [Steve Motz](#)
Telephone Number: [\(517\) 241-3215](#)
E-Mail Address: motzs@michigan.gov



Table of Contents

1.0	Project Identification	12
	1.001 PROJECT REQUEST	12
	1.002 BACKGROUND	12
1.1	Scope of Work and Deliverables	14
	1.101 IN SCOPE	14
	1.102 OUT OF SCOPE	14
	1.103 ENVIRONMENT	14
	1.104 WORK AND DELIVERABLES	16
1.2	Roles and Responsibilities	25
	1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES	25
	1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES	28
1.3	Project Plan	29
	1.301 PROJECT PLAN MANAGEMENT	29
	1.302 REPORTS	33
1.4	Project Management	33
	1.401 ISSUE MANAGEMENT	34
	1.402 RISK MANAGEMENT	34
	1.403 CHANGE MANAGEMENT	34
1.5	Acceptance	34
	1.501 CRITERIA	34
	1.502 FINAL ACCEPTANCE	35
1.6	Compensation and Payment	35
	1.601 Compensation and Payment	35
	Attachment A – Cost Proposal	37
	Attachment B - Instructions for Disaster Declaration	45
	Attachment C - Hardware Configuration of Recovery Facility	46
	Article 2, Terms and Conditions	49
2.000	Contract Structure and Term	49
	2.001 Contract Term	49
	2.002 Options to Renew	49
	2.003 Legal Effect	49
	2.004 Attachments & Exhibits	49
	2.005 Ordering	49
	2.006 Order of Precedence	49
	2.007 Headings	50
	2.008 Form, Function & Utility	50
	2.009 Reformation and Severability	50
2.010	Consents and Approvals	50
	2.011 No Waiver of Default	50
	2.012 Survival	50
2.020	Contract Administration	50
	2.021 Issuing Office	50
	2.022 Contract Compliance Inspector	51
	2.023 Project Manager	51
	2.024 Change Requests	51
	2.025 Notices	52
	2.026 Binding Commitments	52
	2.027 Relationship of the Parties	52
	2.028 Covenant of Good Faith	53
	2.029 Assignments	53
2.030	General Provisions	53
	2.031 Media Releases	53
	2.032 Contract Distribution	53
	2.033 Permits	53
	2.034 Website Incorporation	53



2.035	Future Bidding Preclusion	54
2.036	Freedom of Information	54
2.037	Disaster Recovery	54
2.040	<i>Financial Provisions</i>	54
2.041	Fixed Prices for Services/Deliverables	54
2.042	Adjustments for Reductions in Scope of Services/Deliverables	54
2.043	Services/Deliverables Covered	54
2.044	Invoicing and Payment – In General	54
2.045	Pro-ration	55
2.046	Antitrust Assignment	55
2.047	Final Payment	55
2.048	Electronic Payment Requirement	55
2.050	<i>Taxes</i>	55
2.051	Employment Taxes	55
2.052	Sales and Use Taxes	55
2.060	<i>Contract Management</i>	56
2.061	Contractor Personnel Qualifications	56
2.062	Contractor Key Personnel	56
2.063	Re-assignment of Personnel at the State's Request	56
2.064	Contractor Personnel Location	57
2.065	Contractor Identification	57
2.066	Cooperation with Third Parties	57
2.067	Contract Management Responsibilities	57
2.068	Contractor Return of State Equipment/Resources	57
2.070	<i>Subcontracting by Contractor</i>	57
2.071	Contractor full Responsibility	57
2.072	State Consent to delegation	58
2.073	Subcontractor bound to Contract	58
2.074	Flow Down	58
2.075	Competitive Selection	58
2.076	Approved Subcontractors	58
2.080	<i>State Responsibilities</i>	58
2.081	Equipment	58
2.082	Facilities	59
2.090	<i>Security</i>	59
2.091	Background Checks	59
2.092	Security Breach Notification	59
2.093	PCI DATA Security Requirements	59
2.100	<i>Confidentiality</i>	60
2.101	Confidentiality	60
2.102	Protection and Destruction of Confidential Information	60
2.103	Exclusions	60
2.104	No Implied Rights	61
2.105	Respective Obligations	61
2.110	<i>Records and Inspections</i>	61
2.111	Inspection of Work Performed	61
2.112	Examination of Records	61
2.113	Retention of Records	61
2.114	Audit Resolution	61
2.115	Errors	62
2.120	<i>Warranties</i>	62
2.121	Warranties and Representations	62
2.122	Warranty of Merchantability	63
2.123	Warranty of Fitness for a Particular Purpose	63
2.124	Warranty of Title	63
2.125	Equipment Warranty	63
2.126	Equipment to be New	64
2.127	Prohibited Products	64
2.128	Consequences for Breach	64
2.130	<i>Insurance</i>	64
2.131	Liability Insurance	64



2.132	Subcontractor Insurance Coverage	65
2.133	Certificates of Insurance and Other Requirements	65
2.140	<i>Indemnification</i>	66
2.141	General Indemnification	66
2.142	Code Indemnification	66
2.143	Employee Indemnification	66
2.144	Patent/Copyright Infringement Indemnification	66
2.145	Continuation of Indemnification Obligations	67
2.146	Indemnification Procedures	67
2.150	<i>Termination/Cancellation</i>	68
2.151	Notice and Right to Cure	68
2.152	Termination for Cause	68
2.153	Termination for Convenience	68
2.154	Termination for Non-Appropriation	69
2.155	Termination for Criminal Conviction	69
2.156	Termination for Approvals Rescinded	69
2.157	Rights and Obligations upon Termination	69
2.158	Reservation of Rights	70
2.160	<i>Termination by Contractor</i>	70
2.161	Termination by Contractor	70
2.170	<i>Transition Responsibilities</i>	71
2.171	Contractor Transition Responsibilities	71
2.172	Contractor Personnel Transition	71
2.173	Contractor Information Transition	71
2.174	Contractor Software Transition	71
2.175	Transition Payments	71
2.176	State Transition Responsibilities	71
2.180	<i>Stop Work</i>	72
2.181	Stop Work Orders	72
2.182	Cancellation or Expiration of Stop Work Order	72
2.183	Allowance of Contractor Costs	72
2.190	<i>Dispute Resolution</i>	72
2.191	In General	72
2.192	Informal Dispute Resolution	72
2.193	Injunctive Relief	73
2.194	Continued Performance	73
2.200	<i>Federal and State Contract Requirements</i>	73
2.201	Nondiscrimination	73
2.202	Unfair Labor Practices	73
2.203	Workplace Safety and Discriminatory Harassment	74
2.210	<i>Governing Law</i>	74
2.211	Governing Law	74
2.212	Compliance with Laws	74
2.213	Jurisdiction	74
2.220	<i>Limitation of Liability</i>	74
2.221	Limitation of Liability	74
2.230	<i>Disclosure Responsibilities</i>	74
2.231	Disclosure of Litigation	74
2.232	Call Center Disclosure	75
2.233	Bankruptcy	75
2.240	<i>Performance</i>	76
2.241	Time of Performance	76
2.242	Service Level Agreement (SLA) – Deleted NA	76
2.243	Liquidated Damages	76
2.244	Excusable Failure	76
2.250	<i>Approval of Deliverables</i>	77
2.251	Delivery of Deliverables	77
2.252	Contractor System Testing	78
2.253	Approval of Deliverables, In General	78
2.254	Process for Approval of Written Deliverables	79



2.255	Process for Approval of Custom Software Deliverables	79
2.256	Final Acceptance	80
2.260	Ownership	80
2.261	Ownership of Work Product by State – Deleted NA	80
2.262	Vesting of Rights – Deleted NA	80
2.263	Rights in Data	80
2.264	Ownership of Materials	81
2.270	State Standards	81
2.271	Existing Technology Standards	81
2.272	Acceptable Use Policy	81
2.273	Systems Changes	81
2.280	Extended Purchasing	81
2.281	MiDEAL (Michigan Delivery Extended Agreements Locally) – Deleted NA	81
2.282	State Employee Purchases – Deleted NA	81
2.290	Environmental Provision	81
2.291	Environmental Provision	81
2.300	Deliverables	82
2.301	Software	83
2.302	Hardware	83
2.303	Equipment to be New	83
2.304	Equipment to be New and Prohibited Products	83
2.310	Software Warranties	83
2.311	Performance Warranty	83
2.312	No Surreptitious Code Warranty	83
2.313	Calendar Warranty	84
2.314	Third-party Software Warranty	84
2.315	Physical Media Warranty	84
2.320	Software Licensing	84
2.321	Cross-License, Deliverables Only, License to Contractor	84
2.322	Cross-License, Deliverables and Derivative Work, License to Contractor	84
2.323	License Back to the State	85
2.324	License Retained by Contractor	85
2.325	Pre-existing Materials for Custom Software Deliverables	85
2.330	Source Code Escrow	85
2.331	Definition – Deleted NA	85
2.332	Delivery of Source Code into Escrow – Deleted NA	85
2.333	Delivery of New Source Code into Escrow – Deleted NA	85
2.334	Verification – Deleted NA	86
2.335	Escrow Fees – Deleted NA	86
2.336	Release Events – Deleted NA	86
2.337	Release Event Procedures – Deleted NA	86
2.338	License – Deleted NA	86
2.339	Derivative Works – Deleted NA	86
Glossary		87



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

The State of Michigan (State), through the Michigan Department of Technology, Management and Budget (DTMB) has issued this Contract for services to provide single-source disaster recovery services for critical Department of Technology, Management and Budget and Department of Civil Service applications that are hosted by DTMB Data Center Services at the Lake Superior Hosting Center, Lansing, Michigan, whether the damage or loss is to a single platform or to the entire facility. This includes the following applications:

- Management Information Database (MIDB),
- Data Collection and Distribution System (DCDS),
- Time and Expense (MiTES) and
- Human Resource Management Network (HRMN)

This project consists of the following components:

- Disaster recovery operations services
- Management with equipment owned by the Contractor at the Contractor's site and utilized by the State on a metered usage basis.
- Support, to include:
 - Help Desk
 - Technical
- Network services and infrastructure to provide connectivity to the State's network infrastructure.

The disaster recovery services solution must be implemented and fully operational by October 1, 2013. This must be confirmed through the successful completion of a DR test prior to October 1, 2013.

The contract will be for a period of three (3) years with an option for four (4) one-year extensions of the services.

1.002 BACKGROUND

Data Center Services (DCS) is a division within Infrastructure Services in the Michigan Department of Technology, Management and Budget (DTMB). DCS focuses on hosting services. DCS is responsible for providing the platforms and operating system software for specific databases, applications, and views to the data serving State business operations. DCS requires a disaster recovery solution in the event of a catastrophe or lesser failure that would prevent the use of business critical systems located in the Lake Superior Hosting Center at the Secondary Complex in Lansing, Michigan. The Lake Superior Hosting Center is staffed 24/7.

The Lake Superior Hosting Center (Center) currently supports three major statewide systems that have been identified as business critical applications: the Data Collection and Distribution System (DCDS), the Management Information Database (MIDB) and the Human Resource Management Network (HRMN). DCDS (including Time and Expense (MiTES)) and HRMN are online transaction processing (OLTP) systems. MIDB is a data warehouse and is refreshed weekly. These systems maintain detailed data required for the ongoing business of all state agencies. In the case of a disaster that would disrupt current operations, the DCDS, HRMN and MIDB systems must be back on-line within 72 hours. The Contractor must provide the necessary hardware and technical support to meet the 72 hour recovery requirement for DCDS, HRMN and MIDB.

The solution currently in place provides for connectivity to the present contractor's hot site via the contractor's national network. A DS-3 line, maintained by SOM through another contracted service provider, connects a designated location in Lansing to a point of presence on the contractor's national network.



Disaster recovery services are also requested for other systems of critical importance to the business of the State of Michigan hosted by the Center: Self Service & Earning Statement, and Lawson Business Intelligence (LBI).

A high level overview of the applications is provided below:

1. Management Information Database (MIDB)

The MIDB currently resides on a Hewlett-Packard (HP) Integrity BL860c. The platform has eight processors with 96 gigabytes of memory. The platform is gigabit Ethernet attached to the State of Michigan (SOM) network infrastructure. The operating system is HP-UX, version 11.31. Database management is accomplished using an Oracle Relational Management Database System, Version 10r2. The MIDB is used in a client/server environment.

It is a data warehouse that serves as the repository for three years of detailed payroll and human resource information. There are multiple years of budgeting, accounting, banking, purchasing information. Additionally, there is limited demographic data stored on the database. State employees throughout the state view the MIDB as a source of information for ad-hoc and standard reporting. Standard reporting has become more important as the database has matured. There is no on-line transaction processing that affects the MIDB database.

2. Data Collection and Distribution System (DCDS)

The Data Collection and Distribution system also resides on a Hewlett-Packard (HP) Integrity BL860c. The DCDS partition has four processors and 48 gigabytes of memory. The operating system is HP-UX Version 11.31. Database management is accomplished using an Oracle Relational Management Database System, Version 10r2. The platform is gigabit Ethernet attached to the SOM network infrastructure.

The DCDS system is an on-line transaction processing system. It was developed as a client/server application to allow State employees to use personal computers and Graphical User Interface screens to capture data and route the information to a central location for validation and approval. On-line processing is up during the day with an evening and nighttime window for batch processing.

The primary purpose of DCDS is to support the capture of time and attendance, labor distribution data and provide extended labor distribution functionality. Additionally, the system captures inventory usage, equipment usage and activity data as a byproduct of the time and attendance. Data is entered for biweekly pay periods with peak data entry occurring during the first three days following the end of a pay period.

3. Time and Expense (MiTES)

The Time and Expense system is a web application for submitting and tracking expenses that shares the DCDS database. It is accessible from the Self Service web page and is used by employees statewide to submit for reimbursement for business related expenses.

4. Human Resource Management Network (HRMN)

The total HRMN application and required end user services, requires the use of three servers.

Part of HRMN is an on-line transaction processing (OLTP) system that resides on a HP Integrity BL870c with twelve processors and 96 gigabytes of memory. The operating system is HP-UX Version 11.31. Database management is accomplished using an Oracle Relational Management Database System, Version 11g.

HRMNESPA1 is a Sun4v SPARC-Enterprise-T5120 with SunOS 5.10 configured both as a WebSphere application and a server platform.



HRMNPW1 is a hp rx2660 web server that supports a thin client application providing employee self service, earning statements and time and expense applications to all State employees.

HRMN provides integrated payroll, personnel, and employee benefits functionality in addition to data exchange with retirement systems. It is a client/server application allowing access by State employees utilizing personal computers, graphical user interface screens and browser interfaces, resulting in streamlined business processes, better information for customers, reduced costs, improved service, and the flexibility to manage the State workforce.

5. Lawson Business Intelligence & LBI Crystal

These applications reside on DELL POWEREDGE R610 servers with a Windows 2008 R2 Operating System, with 2 X5650 @ 2.67 GHz processors, and 8Gb of memory.

MIDB and DCDS Data Storage and Operations Both the MIDB and DCDS computer platforms are storage area network (SAN) attached to EMC VMAX storage equipment utilizing M1/M2/BCV disk configuration. Currently, MIDB users have access to the data warehouse on a 24-hour basis with the exception of the window used to update the database and for system maintenance. The window for database update is from 6:00 p.m. Friday until 7:00 a.m. Saturday. Each weekend, data is file transferred from source systems to the HP platform. The source for the financial and purchasing information is an IBM computer located in Boulder, Colorado. The source for the payroll and human resources information is an HP computer located in Lansing, Michigan.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

Contractor will provide the services described in Section 1.104 below for the complete and successful implementation of a disaster recovery solution providing the functionality required for the State's business operations for the Michigan Department Technology, Management and Budget. Services to be provided by the Contractor include maintenance of required hardware at a recovery facility that would allow for the reload and recovery of data within a specified time frame. The Contractor shall provide all necessary disaster recovery hardware, systems software, network connectivity to the locations, and technical support required in this Contract. The hardware and software shall be kept current with changes in the production environment.

1.102 OUT OF SCOPE

The following services are not in the scope of this Contract:

- Analysis of the existing business processes (except as needed to clarify the documentation provided)
- Development of databases, applications, and views.

1.103 ENVIRONMENT

Throughout the Contract Term, the configuration of the equipment/system software for the DR configuration shall be the same class of server and shall match or exceed the processor, memory, space, encryption capabilities and network requirements of the production environment.

The Contractor shall provide all necessary hardware and software licenses for the DR environment. For the Oracle Key Manager, HP will provide this appliance as a dedicated device to The State but will remain owned by HP. The appliance will be rack mounted and will include pre-loaded key manager software and Solaris software. The State will be responsible for all configuration and management of this appliance.

Information regarding the State's information technology architecture and standards for hardware, database applications, network hardware and monitoring tools, identity management/authentication and development tools may be found at: <http://www.michigan.gov/dmb/0,4568,7-150-56355---,00.html>.



The environment provided by the Contractor will change as the States production environment changes. These changes shall be within the timeframes necessary to meet the States implementation schedule for its environment.

- Contractor must apply changes to the configuration of the contracted equipment (whether made by Change Orders or by changes to set up definition requests or by other means as arranged by the State and the Contractor) as well as encryption requirements which support the disaster recovery environment (hardware requirement lists, software definitions, set up specifications, and other support resources as applicable) and provide evidence of such within ten (10) work days of the Change Orders or Contract Modifications.
- There is no limit on the number of configuration changes. As the changes are applied, the next invoice will reflect the change in monthly fee. The cost increase/decrease will be based on those specific changes the State requests. HPES will provide a specific cost impact analysis due to the specific State provided configuration changes.

The current components for which disaster recovery services are detailed below:

HRMN

Specs Description

- 1 HP BL870c
- 12 1.73Ghz cpu
- 96 GB memory
- 1 STK SL3000-B w/ 1 x T10000 tape drive
- 1 Gig-E network interface VLAN1
- 1 HP DVD-ROM drive
- 1776 GB SAN application disk
- 2 x 300 GB internal OS disk
- HPUX 11i V3 (11.31) OS
- DAT 160 Internal Tape Drive

MIDB

Specs Description

- 1 HP BL860c
- 8 1.33GHz cpu
- 96 GB memory
- 1 STK SL3000-B w/ 1 x T10000 tape drive
- 1 Gig-E network interface VLAN2
- 1 HP DVD-ROM drive
- 1584 GB SAN application disk
- 2 x 300 GB internal OS disk
- HPUX 11i V3 (11.31) OS
- DAT 160 Internal Tape Drive

DCDS

Specs Description

- 1 HP BL860c
- 4 1.33GHz cpu
- 48 GB memory
- 1 STK SL3000-B w/ 1 x T10000tape drive
- 1 Gig-E network interface VLAN1
- 1 HP DVD-ROM drive
- 624 GB SAN application disk



2 x 146 GB internal OS disk
 HPUX 11i V3 (11.31) OS
 DAT 160 Internal Tape Drive

TAPE LIBRARY

Specs Description

1 STK SL3000-B tape library w/minimum of 3 T10000 DRIVES (B drives w/ encryption enabled)
 1 CD-ROM DRIVE
 3 Gig-E network interfaces - VLAN1,VLAN2 & VLAN3

HRMNESPA1

Specs Description

1 SUNW,SPARC-Enterprise-T5120
 1 x 4 @1.2GHz cpu
 16 GB memory
 1 Gig-E Network Interface VLAN1
 0 GB SAN application disk
 4 x 73 GB internal OS disk
 Solaris 10

HRMNPW1

Specs Description

1 hp server rx2660server
 2 1.59 GHz,cpu
 8GB memory
 1 Gig-E Network Interface VLAN1
 0 GB SAN Application disk
 2 x 146 GB internal OS disk
 HPUX 11i V3 (11.31) OS

LBI & LBI Crystal servers (each server)

Specs Description

1 DELL POWEREDGE R610
 22.66GHz cpu
 8GB memory
 1 Gig-E network interface VLAN1
 100
 4 x 146GB internal OS disk RAID 5 disk configuration
 Windows 2008 R2 OS

Oracle Key Management Appliance

Specs Description

Oracle Key Manager Appliance (includes pre-loaded key manager software, version 2.5, and a Solaris Operating System)

1.104 WORK AND DELIVERABLES

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary to provide disaster recovery services in accordance with the requirements as set forth below. **All required deliverables and services identified in Section 1.104 shall be included in the firm fixed pricing provided in Attachment A.**



I) Services to Be Provided

Contractor will assist the State in preparing for and responding to a Disaster at a covered address. As part of these services, the Contractor will provide equipment and software, support services, telecommunications services, and a facility to assist in the performance of critical business and information processing activities in the event of a Disaster. A semi-annual test of the services will also be conducted.

1) Acceptance

The Contractor will accept the order for Services upon receipt of a Contract Notice and Purchase Order from the State of Michigan that has been approved by both parties.

If the initial Configuration includes equipment not currently available at the primary recovery site, and the Contractor cannot provide compatible equipment of equivalent or greater capacity and functionality, the Contractor will initiate its acquisition process for such equipment immediately following signing of the Contract. If such equipment is not yet installed when the State declares a Disaster, the Contractor will use commercially reasonable efforts to provide alternate equipment, or the Configuration at another facility.

The State will provide the Contractor with one (1) month's written notice of any requests to change any detail of the Configuration. If the Contractor agrees, the Contractor will confirm the change by sending the State, a revised Configuration specifying the effective date of the change and the adjusted charge. The Contractor will not unreasonably withhold its agreement.

2) Recovery Exercise Time

The Contractor will provide 2 tests annually of 48 hours each to test the State's recovery plan, procedures and operation. If the State requests additional hours or additional exercises, beyond the annual recovery exercise allowance, the Contractor will provide it on an "as available" basis in four-hour blocks for an additional charge that is specified in the Pricing section.

If requested by the State, the Contractor will provide additional time for rehearsal in eight (8)-hour blocks. All rehearsals are conducted in 8-hour increments. Any requests for additional 8 hour blocks will be made at time of rehearsal scheduling or with 30-60 days' notice to allow flexibility in scheduling. If the request is made at time of rehearsal the Contractor will attempt to accommodate the State.

3) Recovery Event

In the event of an actual outage emergency, the State notifies the Contractor that there is a disaster and the Contractor will begin to prepare, without delay, recovery site facilities for the State's use. The Contractor will allow access to the center within 2 hours of a declaration. Access to the center refers to entering the facility. Once the environment is ready the customer is allowed to enter their rehearsal room. The Contractor will provide the configuration of hardware and connectivity no later than seven (7) hours after the State officially notifies the Contractor of the disaster. The Contractor shall provide fresh OS installs matching the then current State of Michigan production environment. The State can remain in the center after a declaration for 90 days (12 weeks) with no daily usage fees; on day 91 daily usage fees will begin as outlined in Attachment A. The State will have priority access to the configuration over any customer, except one who has already declared before the State.

See **Attachment B** for Instructions for Disaster Declaration.

4) Technical and Operational Support for Recovery Event and Recovery Exercise

The Contractor will provide a single point of contact that will coordinate support activities prior to, during, and following an outage event or recovery test. Prior to an event or test, the Contractor will assist in planning and preparation as described in documentation provided by the Contractor. The Contractor will create connectivity descriptions and, where applicable, a document that defines how the



equipment configuration is mapped to the equipment provided. Prior to the event or exercise, the Contractor will set up and check out physical connectivity of the equipment to verify that what the Contractor provides is connected as set forth in the documentation. During an event or test, personnel on-site and on-call will assist with the problem determination related to the hardware and software provided by the Contractor with the Configuration, and will track issues and problems related to the provision of services during the event or test. Following an event, the Contractor will participate in a review, at the State of Michigan's request. For an exercise as well as recovery, a contact person will be on-site or on-call twenty-four (24) hours per day from the time the State declares and outage or begins the recovery test exercise until the event or test ends.

5) Product Removal

The Contractor will give the State six (6) months' written notice of its intent to no longer provide an item in the Configuration and also not provide a compatible substitute item that offers equal or greater capacity and functionality. In such circumstance, the State may terminate this Contract, upon three (3) month's written notice within one (1) year of such notification.

6) Deliverables

Transition Deliverables

1. Orientation Meeting

Brief Description: Kickoff meeting to be held shortly after Contract Execution as outlined in Section 1.301.

Deliverable Type: Document

Format: Meeting Minutes to be delivered softcopy via email

Completion Criteria: Completion of the meeting and delivery of the email to the State.

2. Transition Project Plan

Brief Description: Project plan listing all Transition phase tasks and deliverables, their delivery dates, and status.

Deliverable Type: Document

Format: Softcopy delivered via email

Completion Criteria: State of Michigan approval via email.

3. Implementation Plan

Brief Description: Document with the following sections:

Deliverable Type: Document

- *Responsibility Document Matrix* clearly delineating State and Contractor responsibilities
- *Impacts to existing Plan* Document identifying impacts to the existing Disaster Recovery Plan related to Transition of the services to Contractor.
- Pre-Testing Quality Assurance Verification Checklist document identifying the quality control and verification measures to be used by Contractor to ensure proper set up of the Hardware for an Event
- *Plan for integration of recovery resources –DS-3 implementation plan -.*

Format: Softcopy delivered via email

Completion Criteria: State of Michigan approval via email.



4. Instructions for Disaster Declaration

Brief Description: Document with the declaration process.
Deliverable Type: Document
Format: Softcopy delivered via email
Completion Criteria: State of Michigan approval via email.

5. Hardware Configuration

Brief Description: Document with the equipment configuration to be included in the Contract – the “Configuration”.
Deliverable Type: Document
Format: Softcopy delivered via email
Completion Criteria: State of Michigan approval via email.

6. Report Formats

Brief Description: Sample status reporting format with sections for deliverable status, schedule status, action item status, issue status, and change control status.
Deliverable Type: Document
Format: Softcopy delivered via email
Completion Criteria: State of Michigan approval via email.

Steady State Deliverables

1. Steady State Project Plan

Brief Description: Project plan listing all Steady State phase tasks and deliverables, their delivery dates, and status.
Delivery Type: Document
Format: Softcopy delivered via email
Completion Criteria: State of Michigan approval via email.

2. Monthly Status Report

Brief Description: Status Report with accomplishments, expected next period activities, Issues, Action Items, Risks, and Changes
Delivery Type: Document
Format: Softcopy delivered via email
Completion Criteria: Delivery of the report to the State of Michigan via email.

3. Quarterly Performance Review Meeting

Brief Description: Face to face or conference call meeting with the State of Michigan Project Manager to review the Monthly Status Report and Project Plan.
Delivery Type: Document
Format: Face to face meeting.
Completion Criteria: Meeting is completed.

4. Semi-annual Test Plan

Brief Description: Document delivered twice yearly prior to each of the Recovery Testing Events highlighting the plan for the Recovery Testing Exercise.
Delivery Type: Document
Format: Softcopy delivered via email.
Completion Criteria: State of Michigan approval via email.



5. Semi-annual Testing hours

Brief Description: Provision of the testing hours to the State in the primary recovery facility.

Delivery Type: Service

Format: N/A - hours

Completion Criteria: The end date/time has been reached .After a rehearsal or disaster, HP will re-format all the disks and prepare the environment for the next customer. See Section 1.104 II Requirement 20 for additional information. If there is an HP issue that occurs during testing, they would continue to work with the State to ensure successful testing.

6. Semi-annual Test Results Report

Brief Description: Document delivered twice yearly post the Recovery Testing Events highlighting the Recovery Testing Exercise results.

Delivery Type: Document

Format: Softcopy delivered via email.

Completion Criteria: State of Michigan approval via email.

7. Annual AICPA Service Organization Control (SOC) Type 2 reports

Brief Description: Document delivered annually to provide details on IT Controls and their effectiveness specific to the State of Michigan.

Delivery Type: Document

Format: Softcopy delivered via email.

Completion Criteria: State of Michigan approval via email.

HPES will require further clarity on monthly and quarterly reports; since this is a shared environment (only available at time of rehearsal or at time of disaster), we will need to determine the applicability and content for the Steady State and Monthly Status reports.

II) Contractor must meet the following requirements:

1. The system server is compatible with the State's technical architecture at the time of the DR test and is sized suitable for the system specified at the time of the DR test.
2. All equipment supplied and/or supported under this contract must be configured in the most optimal manner and in conformance with DTMB standards.
3. Contractor's recommended hardware platform/topology shall provide for optimal functioning in the following areas:
 - a. Communication line speed for distributed entry functions and major online processes of departments and offices located in various areas of the State.
 - b. Processing the volumes presented and any increases in volume that can be expected through the implementation of the proposed system.
 - c. Remote access and administration
 - d. Application installation, administration and support
 1. The State will be responsible for installation of application/data
 - e. Support for a variety of TCP/IP network configurations

The Contractor's solution includes shared Internet that will be available at the time of the rehearsal or disaster, as well as a dedicated DS-3 circuit, per the State's configuration.

The Contractor has also included a dedicated DS-3 communications link between the State's data center and the HPES Alpharetta data center. HPES will own the carrier circuit and thus will not invoice to the State for any charges. The State may elect to procure the communication circuits independent of this agreement.



4. All computer information systems and applications operate in a secure manner and comply with State and federal security standards and regulations including the DTMB 1350 **Enterprise Security Policy** and the 1410.7 **Michigan State Government Network Security Policy**.
5. The system must ensure that the integrity and confidentiality of data is protected by safeguards to prevent release of information without proper consent. The Contractor shall follow the encryption standards provided in the current State of Michigan Encryption Policy 1340.00.07. The State will advise HP of changes to the encryption requirement as noted above in Section 1.103 Environment. In all cases, State data shall be physically or logically isolated from other customers through the use of VLAN, vSAN, LUN masking, and Firewalls. The Contractor shall provide and maintain all layer 1 and layer 2 infrastructures as part of standard services to enforce customer privacy and protection.
 - a. For any activities not performed at State sites or facilities, the Contractor will provide effective physical security measures for all proposed equipment sites, all processing and operations areas (including the mailroom), and secured storage areas through a card key or other comparable system. At a minimum, the Contractor will: restrict perimeter access to equipment sites, State-specified processing and storage areas, and storage areas through a card key or other comparable system.
6. Physical security shall include additional features designed to safeguard site(s) through required provision of fire retardant capabilities, as well as other electrical alarms, monitored by security personnel on a twenty-four (24) hours a day, seven (7) days a week basis. Access to the HPES recovery center is controlled through bio-metric, two-factor authentication. The security system shall be remotely monitored 24x7
7. Maintain a current positive annual security rating as specified in the AICPA Service Organization Control (SOC) Type 2 document.
8. If the State should require a lower RPO and data replication is required, the Contractor will work with the State to implement a data replication solution that will best accommodate the State's requirements. If needed, depending on the RPO required, the Contractor can work with the State to explore alternative options such as Electronic Vaulting, Appliance-based Replication Services, Enterprise Cloud Services, and so forth.
9. All maintenance is performed by qualified personnel familiar with the equipment.
10. Remote diagnostic capabilities are provided. The DR solution will allow for full remote rehearsals. Any diagnostics can be performed by the State remotely at time of rehearsal or disaster.
11. Maintenance service options are provided for all equipment during an event or recovery exercise, including 24 x 7 x 365 service, onsite service, 2- (emergency), 4-, and 8-hour and next day response times.
12. When the State notifies contractor that they are experiencing a Disaster, The Contractor will begin to prepare, without delay, the recovery facilities for State use. The State will have access to the facility two (2) hours after a disaster is declared. The Contractor shall provide the Configuration as soon as the State is ready to use it and will provide it no later than seven (7) hours after Disaster declaration.
13. Contractor shall provide a hot site for disaster recovery services. A hot site is defined as a facility fully-prepared to support specified computing needs and providing an equivalent configuration available for immediate restoration and processing of the identified systems in the event of an interruption in the Center's computer services.



14. Recovery server configurations must provide no less capability than the minimum requirements of the stated components, including SAN, non-SAN DASD, OS and tape requirements and must be capable of running the described operating systems and all system software and applications software which run under those operating systems. The Contractor will perform pre- and post-rehearsal meetings; starting with the first rehearsal, any issues can be captured so they can be avoided in the future.
15. Contractor must provide technical documentation at the proposed recovery facility appropriate to the required recovery platforms. The Contractor shall maintain libraries of operating system reference manuals, either hard copy or electronic, that will be available for the State's use. This material must be available for use by State staff when operating from the recovery facility.
16. The hot site shall provide disaster recovery with the necessary hardware, connectivity to the locations requested and technical support to allow for the reload and recovery of data within 7 hours of declaration for the following systems:
 - a. DCDS including Time and Expense (MiTEs)
 - b. HRMN including Self-Service and Earning Statement Applications.
 - c. MIDB
 - d. LBI
17. The disaster recovery services must be in place and fully operational so that recovery is available if a disaster strikes October 1, 2013. Once the contract is signed, the State is covered in the event of a disaster; the State will also be able to schedule a rehearsal once the contract is signed. We can usually schedule a rehearsal within 3 months of contract signature.
18. The hot site shall meet the following network requirements:

Specs	Description
1	CISCO router base unit
1	100 MB FAST ETHERNET PORT
1	HSSI PORT
3	SERIAL PORTS
1	CISCO SWITCH - BASE UNIT #1
	Gigabyte capable blade w/minimum 24 ports
1	RSM (Route Switch Module)
19. The remote facility(s) offered as disaster recovery hot sites must be able to connect the hot site configurations to the State of Michigan network for remote operation during a disaster declaration, and to provide remote testing and recovery capabilities.
 - a. DS-3 line speed is required.
 - b. The State reserves the right to separately contract for the connection at the designated speed from a third party carrier for the connection from a disaster recovery services point of presence to the State of Michigan point of presence.
20. Contractor shall coordinate tests of the hot site with the State.
 - a. Semi-annual tests, 48 hours in duration, totaling 96 Hours of total annual test time. This test time does not include any delays encountered/caused by the vendor or time for HP's standard data erasure and clean up.
 - As part of standard data erasure and clean up, after a rehearsal or disaster, HP will re-format all the disks and prepare the environment for the next customer. In the event The State will be performing specific Data Sanitization on all disks the State will need to provide HP with the amount of time this will take as it will need to be part of the State's rehearsal time; so additional rehearsal time will be required in this scenario. HP also provides a service where the HP team can perform disk scrubbing, this is a service that can be priced out for The State if they require it.



- This time can be used contiguous, or can be broken into 8 hour segments. If broken into 8hr segments, the State can access the environment outside of the 8hrs but no HP staffing resources nor physical access to the facility will be required to be provided by HP. State access outside of the 8 hours during the scheduled rehearsal period will not count against the annual test time. For example, the State could have two rehearsals (each in 8 hour increments) consisting of one rehearsal for 16 hours and the second rehearsal for 32 hours. HPES will work with the State to divide the rehearsal time 8-hour blocks that best accommodate the State's needs.
- b. Testing must be inclusive of all necessary services (hot site systems and facilities, network facilities, and workgroup facilities) necessary for the State to fully test its recovery capabilities.

21. The Contractor must provide the following:

- a. Instructions for Disaster Declaration
- b. Hardware Configuration of Recovery Facility

Upon contract execution, Contractor will assign an ASM (Account Support Manager) to the State.

Contractor will also provide the State with documents such as the Authorized Caller List (ACL) and The Recovery Services User Guide. The User Guide will state how to declare a disaster, the 1-800 number to dial, hotels and restaurants in the area, directions to the center, and so forth. The Contractor will use the ACL completed by the State to identify who from the State can declare a disaster.

22. Contractor must provide 24 hours per day 7 days per week recovery support and network engineering support at the recovery facility. Escalation shall be provided as necessary to senior technical/engineering staff, and then to higher management and/or senior management for the duration of all recovery operations and tests.

23. Contractor must have physical security resources and procedures including but not limited to, cameras, monitors, and environmental controls at the hot site sufficient to support the States production configuration, to include:

- a. Fire suppression systems (extinguishing systems-FM200 or equivalent).
- b. Fire, smoke, and leak detection monitoring systems.
- c. Air conditioning/water chilling systems, power sources and backup power sources
- d. Redundant power sources, power generators, UPS, and networking redundancy
- e. Redundant capabilities for communications utilities at the hot site

24. Contractor must allow the State up to 2 audits/inspections per year of the hot site independent of scheduled test time. The State will work with its assigned ASM to schedule these inspections.

25. Contractor must allow any regulatory authority having jurisdiction over the State to inspect the recovery facility up to 3 times per year.

26. Contractor must guarantee the State access within 2 hours of declaration to the primary facility, equipment and support personnel at the time of declaration.

27. The State will provide 60 days' notice for cancellations or the need to reschedule, and no penalty will be assessed. In the event the State provides less than 60 day's notice for cancellations or the need to reschedule, the State may forfeit that rehearsal time. If the State declares a disaster the entire rehearsal will be re-scheduled. The rehearsal will be rescheduled according to the HP and the State's schedule.

28. Contractor must have its own network backbone connecting all primary recovery centers. The Primary facility is out of Alpharetta GA, however, the DR solution also includes other potential recovery sites in the event Alpharetta GA experiences a regional disaster. The additional facilities are provided below:



- Littleton, MA
- King of Prussia, PA
- Colorado Springs, CO

The Data center and Data must be located within the continental United States.

29. Contractor must inform the State, in writing, at least 120 days in advance of any changes to the disaster recovery center hardware or services.
30. Contractor must be able to handle a disaster with multiple subscribers making declarations. The Contractor will maintain a geographical dispersion to avoid local customers competing for the same systems.
31. Contractor must be able to maintain flexibility of the hardware configuration at the hot site. Increases in usage and/or system updates could require updates to hardware or increases in storage capacity. Contractor must be able to provide requested updates to the hot site configuration within ten days of approval by both the State and Contractor. In the event a specific hardware is not in inventory, the Contractor will notify the State and will provision that hardware within 90 days.
32. The State requires ninety-six hours of annual test time for all covered platforms. Test time to be scheduled as two separate tests of 48 hours in duration. All covered hardware and connectivity must be available for testing purposes for the full 48 hours. This will not include data erasure and clean-up time. If the State requires additional data scrubbing or data sanitization, the State will be provided full access to the DR system to accomplish this.
33. DELETED

E. Optional Services

Optional services include but are not limited to the following:

Electronic Vaulting: Allows for a backup to be performed at the production site and only changes are sent to the DR facility residing in a vault. The State shares the vault with other customers. At time of rehearsal or disaster the data has to be pulled off the vault and storage onto a storage array. HPES requires OS version and application data/versions to confirm supportability. This solution requires the State to provision a dedicated network.

ECS: (A new solution just released by HP BCRS that is currently support this solution only on Wintel and Linux at the time of Contract execution) This is a cloud solution based fully on virtual machines. This solution consists of data replication (only for the cloud solution) and allows for RPO of less than 20 minutes and RTO of 4 hours or less.

Consulting Services (can be tailored to the State's specific needs):

- Full Business Impact Analysis (BIA) to partial/refresh
- Risk assessments
- DR Strategy Assessments
- DR planning
- Rehearsal management

HPES' solution will consist of remote access to the DR site. The Contractor can also provide consulting capabilities such as full/refresh BIA, rehearsal management services, solution and data center risk assessments, and assistance with DR planning.

The following physical locations will be made available for use by State personnel for the recovery operation in the event of a regional incident;



Work area recovery facilities/remote facilities:

- Minneapolis, MN
- Wayne, PA
- Dallas, TX
- Cerritos, CA
- Littleton, MA
- Alpharetta, GA

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

Contractor must present certifications evidencing satisfactory background checks and drug tests for all staff identified to provide services under the contract. Contractor is responsible for any costs associated with ensuring their staff meets all security requirements.

Contractor must identify, in its proposal, the location of personnel providing engineering support to the State as well as to the Contractor's technical personnel directly servicing the proposed systems.

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.

The recovery site must be staffed with competent technical staff experienced in the appropriate platforms' operations and capable of providing assistance to State personnel in all facets of the recovery site operation. Contractor must describe the personnel and expertise that will be provided, their location (with the State team, nearby on site, or on call and at what response time) and their availability schedule, during both actual recovery and recovery exercises. The Contractor will provide resumes for staff, including subcontractors, who will be assigned to the Contract, indicating the responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The Contractor will commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the State. Any replacement of the Contractor's team members will be with personnel with similar or superior qualifications to the team member being replaced.

The Contractor's team must work in conjunction with any contractor utilized by the State to resolve technical issues that may arise during the use of the Contractor's disaster recovery services. The Contractor's staff must speak directly with the other contractor, when requested by the State or as the situation requires, to ensure the resolution of these technical issues by the timeframes detailed in the requirements of this Contract.

The Contractor is required to attend any meeting arranged by the State to facilitate the resolution of a technical problem associated with the performance of any disaster recovery services purchased from this contract. Should the Contractor (or an assigned designee) fail to attend this meeting at the agreed upon date and time without sufficient notice (24 hours) to the State, the Contractor shall be responsible for reimbursing the State for any charges levied by the other contractors for time expended for this missed meeting.

The Contractor will identify a Contract Administrator. The duties of the Contract Administrator shall include, but not be limited to: i) supporting the management of the Contract, ii) facilitating dispute resolution, and iii) advising the State of performance under the terms and conditions of the Contract. The State reserves the right to require a change in the current Contract Administrator if the assigned Contract Administrator is not, in the opinion of the State, adequately serving the needs of the State.



The Contractor must provide the name and contact information (i.e., telephone number, pager number, cellular phone number, etc.) of the Disaster Recovery Contact (e.g., supervisor, service manager) specifically assigned to the State to resolve disaster recovery issues. This contact must be available (“on call”) to the State on a 24X7 basis. The Contractor must proactively keep this contact information updated.

Joseph Sagan
 joseph.sagan@hp.com
 517-944-5670
 HP Enterprise Services, LLC
 515 Westshire
 Lansing, Michigan, 48917

The disaster recovery contact and the Contract Administrator shall be identified as a Key Personnel subject to the State’s interview and approval.

The Contractor will provide a project manager to work closely with the designated personnel from the State. The project manager will coordinate all of the activities of the Contractor personnel assigned to the services and create all reports required by State.

The Contractor shall assign a project manager for the services. 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 following lists the key personnel roles and staffing:

- Jamie Trierweiler, Contract Manager
- Brian Howard, Project Manager
- Joseph Sagan, Disaster Recovery Contact
- Alanda Baker, Account Support Manager

Below is a listing of the various DR personnel/roles that work at the BCRS Alpharetta Disaster Recovery Facility. The number of staff onsite in Alpharetta, GA and Lansing, MI shall be sufficient to meet the needs of the State should any disaster occur and will vary depending on several factors (shift, time of day, and so forth). The Contractor will seek the approval of the State before naming any replacement staff for key personnel for this project.

Account Support Manager

The Account Support Manager will be dedicated to the account and will attend each rehearsal or disaster and is responsible for the following tasks:

- Scheduling the rehearsal and collecting pertinent information prior to the customer’s visit to an HPES Recovery Facility
- Conducting the post-rehearsal review and responding to all the State’s concerns
- Managing, writing, and distributing the post-rehearsal report.



The following personnel will be available to provide support as needed at the time of a rehearsal or disaster to support the State. They are not dedicated exclusively to the State.

Alanda Baker - Contact Information

HP Continuity Services - Alpharetta
770-343-0398 desk
470-774-1001 cell
alanda.baker@hp.com

Delivery Manager

The Delivery Manager of the Alpharetta facility will participate in each rehearsal or recovery. This person is responsible for the following tasks:

- Scheduling and controlling the preparation process for any customer visit to an HPES Recovery Facility
- Managing the maintenance of the Recovery Facility infrastructure and systems to 100% peak condition
- Assisting the customer in meeting their rehearsal or recovery goals
- Conducting the post-visit review and responding to all customer concerns.

Technical Assistance

A highly trained and experienced HPES system specialist will be assigned to each customer for the duration of their Recovery Facility stay. This technical specialist will be responsible for the following tasks:

- Configure the system hardware and load the correct operating system/image
- Configure and connect data and telecommunications equipment or circuits
- Answer questions and assist in loading and configuring applications
- Consult with the customer and make recommendations on system and network alternatives
- Participate in the post-visit review.

System Recovery Specialist

A highly experienced group of systems and communications specialists that acts as a technical center for the systems installed in facilities throughout the United States. The specialists are responsible for the following tasks:

- Assist the State's staff in configuring its operating systems and applications to the hardware at the Recovery Facility, as well as the OS for any other multi-vendor equipment, such as SUN or IBM.
- Consult with the State on systems and network configuration alternatives based on the State's needs and existing Recovery Facility hardware.
- Document the State disaster recovery communications configurations.
- Configure communications equipment and/or circuits to the State specifications for rehearsals and recoveries.
- Assist the HP BCRS Delivery Manager in conducting post-rehearsal reviews that are conducted after every rehearsal.

Telecommunication Specialist

This highly experienced telecommunications and information systems individual is available to assist the State's staff with their telecommunications needs, from the initial proposal stage through design engineering, installation, and rehearsal.

Security Personnel

A full-time staff of security personnel is used for several critical applications of HP BCRS, which include the following:

- Monitoring the building and grounds surrounding the Recovery Facility with closed-circuit TV.
- Answering the dedicated backup phone line for the State 24 hours a day, seven days a week.
- Acting as special security to stand by and guard a system if the State has an especially sensitive application.



HP BCRS will have at least one (1) person on site to specifically provide technical support for the State operations at the Recovery Facility. Additional staff will be added during a rehearsal or disaster as required.

B. On Site Work Requirements

1. Location of Work

The Contractor can work offsite, however there will be some work required on-site at deemed locations during the project. The on-site locations will vary across the State as required.

2. Hours of Operation:

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

3. Travel:

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

4. Additional Security and Background Check Requirements:

Contractor must present certifications to the MDOS Contract Compliance Inspector 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

The State project team will consist of DTMB staff in the roles of Executive Sponsors, Subject Matter Experts (SME's), and a project manager. The DTMB Executive Sponsors will identify the additional members of the steering committee or project team. DTMB will provide a Project Manager. DTMB will be responsible for the State's infrastructure and work together with the Contractor in determining the system configuration.

The project steering committee will provide the following services:

- Approve the testing schedule
- Authorize modifications for scope, resources, and budget of the project
- Ensure senior management commitment to the project
- Act as a final arbiter on proposed changes that significantly affect the business interests of the State

The Subject Matter Experts representing DTMB Agency Services units involved meeting service delivery goals on behalf of client agencies. The SME's will provide the vision for the integration of the disaster recover plan into the client agencies' business continuity plans. They shall be available on an as needed basis. The DTMB SME's will be empowered to:

- Resolve project issues in a timely manner
- Review disaster recovery plan, status, and issues
- Resolve deviations from disaster recovery plan
- 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.

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

- Provide acceptance sign-off
- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate communication between different State departments/divisions (IT-Networking, Integrated Services, Administration, Technical Services, Accounting, Telecom etc.)
- Resolution of disaster recovery logistical issues
- Escalation of outstanding/high priority issues
- Utilize change control procedures
- Conducting regular and ongoing review of the disaster recovery plan to confirm that it meets original objectives and requirements
- Documentation and archiving of all important disaster recovery planning decisions
- Arrange, schedule and facilitate State staff attendance at all disaster recovery planning meetings

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

Level 1 – Project Manager

Level 2 –SME's

Level 3 – DTMB Executive Sponsors

The Michigan Department of Technology, Management and Budget is responsible for the administration of the services within the contract. DTMB shall provide a Project Manager as a contact for all issues pertaining to the execution of services under the contract. As of the effective date for contract commencement the DTMB

Project Manager shall be:

Lisa Evani

evanil@michigan.gov

517-373-1840

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

A. Orientation Meeting

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

B. Performance Review Meetings

- a. The State will require the Contractor to attend quarterly meetings, at a minimum, to review the Contractor's performance under the Contract.
- b. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor.
- c. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

C. Project Control

- a. The Contractor will carry out this project under the direction of DTMB.
- b. The Contractor will manage the project in accordance with the PMBOK® (Project Management Body of Knowledge from the Project Management Institute) and the state's Project Management Methodology (PMM). Methodology is available at www.michigan.gov/projectmanagement.
- c. The Contractor shall adhere to the State Unified Information Technology Environment (SUITE) which includes standards for project management, systems engineering, and associated forms and templates. See <http://www.michigan.gov/suite> for an overview of SUITE.



- d. 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.
- e. Contractor shall use automated project management tools, as reasonably necessary, in order to perform the cited Services, which shall include, through the end of the Contract, the capability to produce:
 - i. Staffing tables with names of personnel assigned to Contract tasks.
 - ii. Project plans showing tasks, subtasks, deliverables, and the resources required.
 - iii. Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - iv. 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's standard to the extent such standard is described with reasonable detail in the Statement of Work.



**RESPONSIBILITY MATRIX
HRMN BUSINESS RECOVERY SERVICES**

(X = Sole Responsibility, J = Joint, P = Primary, S = Secondary)		Responsibility	
	Description	Contractor	State
	Business Recovery Services		
1.	Define, maintain, and provide copies of the State's (HRMN, MIDB, and DCDS) Disaster Recovery Plan;		X
2.	Review and update Disaster Recovery Plan annually (or more often, if needed), including a review of recovery configurations to ensure there is adequate capacity in the event of a disaster;	S	P
3.	Update recovery configuration(s) at the Disaster Recovery Center as required by the Disaster Recovery Plan;	X	
4.	Maintain and provide resources sufficient to enable Business Recovery Services adequate to recover the critical elements of the HRMN, MIDB, and DCDS applications during a declared disaster;	J	J
5.	Provide Hot Site Recovery Services;	X	
6.	Provide Hot Site Physical security;	X	
7.	Provide 24 hours per day, 7 days per week security coverage, including secure customer parking and controlled-access to the Hot Site facility entrances;	X	
8.	Provide access-control monitoring systems, and closed circuit cameras, located in each external entrance to the Hot Site facility;	X	
9.	Provide badge readers or numeric scramble pads within the recovery Hot Site to strictly control access to all doors to system recovery suites, storage areas, and customer offices;	X	
10.	Provide on-site security staff full-time and on all shifts at the Hot Site facility	X	
11.	Provide redundant power for the equipment and environmental systems (including UPS and backup generators for the Hot Site facility;	X	
12.	The location of the Hot site and offices shall conform to all National Fire Protection Association (NFPA) 75 standards. Shutdown procedures shall be readily available in case of an emergency	X	
13.	Provide State of Michigan application security while applications are running at the Hot Site facility		X
A)	Backup		
14.	Perform daily and weekly backup of all System Software, Configurations, and other Critical Software		X
15.	Schedule backup jobs for backup of Application Software data and State production libraries		X
16.	Execute backup requests for Application Software data		X
17.	Execute off-site media storage procedures for archival and recovery purposes, utilizing an authorized off-site third-party vendors, for all backup media, including:		X
18.	Log and track media both on and off site		X
19.	Perform required rotation of media		X
20.	Pay all fees and costs associated with off-site media storage		X
B)	Disaster Recovery Testing		
21.	Create and maintain a plan for conducting an annual Disaster Recovery Test for the State HRMN, MIDB, and DCDS Systems	S	P



(X = Sole Responsibility, J = Joint, P = Primary, S = Secondary)		Responsibility	
	Description	Contractor	State
22.	Conduct an annual Disaster Recovery Test that will adequately demonstrate Contractor's ability to recover the Configuration as defined in the Disaster Recovery Plan HPES will only be responsible for layer 1 and layer 2 infrastructures, installation of the State images (if provided-if not, installation of base OS), configuration of Storage Array/allocation of LUNs accordingly, and configuration of libraries. Layer 1 and 2 refers to VLans, Fabric, Shared Storage Array configuration and LUNs allocated, Library configured and connected. The State will be responsible for installation of software, applications, and restoration of data.	X	
23.	Conduct an annual Disaster Recovery Test that will adequately demonstrate the State's ability to recover critical HRMN, MIDB, and DCDS Applications, and the transfer of operations to a Recovery Center as defined in the Disaster Recovery Plan		X
24.	Supply personnel and programs necessary for the maintenance of the Disaster Recovery Plan and the annual testing of the Business Recovery Services	S	P
25.	Conduct pre-test meetings with State HRMN, MIDB, and DCDS Personnel and Management	P	S
26.	Provide a Disaster Recovery test platform (including CPU, DASD, Tape, and other resources) sufficient to execute the DR Test Plan	X	
27.	The Contractor will Test recovery of the Configuration and the State will perform the recovery of the data and restoration of applications/software.	X	
28.	Test recovery of the Critical Software, and related Application Software data		X
29.	Schedule the twice per year Test events	P	S
30.	Obtain Test participant Commitment	J	J
31.	Ship required media to the recovery site prior to testing		X
32.	Provide staff required to load media at the recovery site for the testing		X
33.	Test and verify environment integrity and functionality	J	J
34.	Communicate with recovery site as required before, during, and after completion of testing to adequately conduct and document testing	S	P
35.	Remove software and files from the Recovery Site at the conclusion of tests		X
36.	Document and track findings regarding the infrastructure to closure, and provide post test results to the State	P	S
37.	Document and track findings regarding the applications to closure, and provide post test results to the State	S	P
38.	Provide a Final Report on the annual DR Test to the State	X	
39.	Provide comments regarding results of test to Contactor		X
40.	Create and execute an action plan addressing any infrastructure problems identified in the execution of the DR Test Plan, and provide the State a copy of such plan	X	
C)	In the event of a Disaster		
41.	Execute the Disaster Declaration process and documented by Contractor.		X
42.	After a disaster is declared, take immediate action to prepare the Recovery Center for use implementing a configuration which is equivalent to the current State configuration or better.	X	
43.	After a disaster is declared, provide the resources necessary for recovery of the critical applications.		X



(X = Sole Responsibility, J = Joint, P = Primary, S = Secondary)		Responsibility	
	Description	Contractor	State
44.	Provide immediate notice of any disaster which has occurred, which may occur, or of events which may lead to a disaster, via verbal contact with one or more of the State's designated representatives, so that the parties may determine when and whether to declare a Disaster and may do so expeditiously to receive priority Business Recovery Services.		X
45.	Provide access to the Hot Site Recovery Center within 2 hours of declaration.	X	
46.	Provide the Configuration no longer than twenty-four (24) hours, after Declaration of a disaster.	X	
47.	Ship required media to the Hot Site		X
48.	Provide tape handlers to load the State's backup tapes into the tape library.	X	
49.	Provide operational services sufficient to restore and operate all critical HRMN, MIDB, and DCDS applications as defined within the Disaster Recovery Plan.		X
50.	Provide resources to debug and fix infrastructure related problems.	X	
51.	Provide office space at Hot Site Recovery Center for operations.	X	
52.	Provide connectivity from Lansing to Contractor facility that connects the Hot Site to the State Network.	X	
53.	Reroute the affected data communications circuits to the Recovery Center		X
54.	Provide all other network connectivity to the Recovery Center, as specified in the Configuration specifications.	X	
55.	Deliver to the Recovery Center off-site backup media necessary to recover Application Software and data within the objective of seventy-two (72) hours of a declared disaster.		X
56.	Operate the Critical Software on the Configuration at the Recovery Center;		X
57.	Furnish all supplies and storage media required to operate the application;		X
58.	Pay all costs associated with off-site backup media, including transportation to and from the storage facility and the Recovery Center;		X
59.	Pay all travel and living expenses incurred by State personnel in the performance of the Disaster Recovery;		X
60.	Pay all travel and living expenses incurred by Contractor personnel in the performance of the Disaster Recovery;	X	
61.	Remove all State data and programs from the Configuration after utilizing the Business Recovery Services		X

1.302 REPORTS

Reporting formats must be submitted to the State's Project Manager for approval within 20 business days after the effective date of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

During the implementation phase, the following reports to be furnished by the Contractor:

- o Deliverable status
- o Schedule status
- o Action Item status
- o Issues
- o Change Control

1.4 Project Management



1.401 ISSUE MANAGEMENT

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

Contractor shall 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

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 Contract. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy.

Contractor's proposal must define risks identified as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the State.

Contractor must create a risk management plan. 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 resulting from this RFP. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon. The risk management plan will be developed in accordance with the State's PMM methodology and the PMBOK® (Project Management Institute).

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 Chief Procurement Officer regarding ultimate approval/disapproval of change request. If DTMB Procurement 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.

1.5 Acceptance

1.501 CRITERIA

The following criteria will be used by the State to determine acceptance of the deliverables provided under this Contract.



- A. Document Deliverables - Documents include, but are not limited to plans, project schedules, user guides, and procedure manuals.
 - 1. Documents are dated and in electronic format, compatible with State of Michigan software in accordance with Article 1.302.
 - 2. Draft documents are not accepted as final deliverables.
 - 3. The documents will be reviewed and accepted in accordance with the requirements of the Contract.
 - 4. DTMB will review technical documents within 30 calendar days of receipt.
 - a. Approvals will be written and signed by DTMB Project Manager with assistance from other DTMB resources and impacted Agencies.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 calendar days of receipt.
 - 5. DTMB Project Manager will review project documents within 30 calendar days of receipt.
 - a. Approvals will be written and signed by both the DTMB Project Manager and Contractor Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 calendar days of receipt.
- B. Service Deliverables - Services include, but are not limited to disaster recovery services, help desk, and support.
 - 1. The services will be accepted in accordance with the requirements of the Contract.
 - 2. DTMB will review a Request for Approval of Services within 30 calendar days of completion or implementation.
 - a. Approvals will be written and signed by both the DTMB Project Manager and Contractor Project Manager.
 - b. Unacceptable issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit a Request for Approval of Services for approval within 30 calendar days of receipt.
 - 3. DTMB staff are properly trained and supplied with the proper tools and documentation in accordance with the requirements of this Contract and the accepted Contractor's proposal.
 - 4. The Contractor has the tools and connectivity installed, in compliance with DTMB standards, to properly provide the services.

1.502 FINAL ACCEPTANCE

Final acceptance is expressly conditioned upon completion of all deliverables, completion of all tasks in the project plan as approved, completion of all applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements.

1.6 Compensation and Payment

1.601 Compensation and Payment

Payment

The State will make monthly payments following approval of correct invoice issued by Contractor in accordance with the cost tables provided in Attachment A.

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

Invoices must provide and itemize, as applicable:

- A. Contract number;
- B. Purchase Order number
- C. Contractor name, address, phone number, and Federal Tax Identification Number;
- D. Description of any commodities/hardware, including quantity ordered;
- E. Date(s) of delivery and/or date(s) of installation and set up;
- F. Price for each item, or Contractor's list price for each item and applicable discounts;
- G. Maintenance charges;
- H. Net invoice price for each item;
- I. Shipping costs;
- J. Other applicable charges;
- K. Total invoice price; and
- L. Payment terms, including any available prompt payment discount.

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

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



Attachment A – Cost Proposal

I. Charges

a. Total Monthly Charge

The State agrees to pay the Total Monthly Charge, as specified below in the Monthly Charges Summary Table B, for each month of a contract period starting on June 1, 2013.

Recovery Charges

In addition to the Total Monthly Charge, the State agrees to pay an Initial Recovery Charge and a Daily Recovery Charge specified below in the Monthly Charges Summary Table B. The Initial Recovery Charge is incurred when the contractor confirms to the State that a Recovery Site has been scheduled for use in response to the declaration of a disaster. For this charge, the contractor makes the configuration available to the State for up to the number of days specified below as “Day(s) Included in Initial Recover Charge”. Thereafter, for each day, or part thereof, that the configuration is available, the Daily Recovery Charge applies.

b. Additional Charges

1. Any associated charges for telecommunications services;
2. Charges for the additional hours and exercises the State schedules beyond the annual Recovery Exercise Allowance specified in the Monthly Charges Summary Table B;
3. Charges for operational and technical assistance, beyond that described in this contract, that the contractor agrees to provide during a recovery event in response to the State’s written request; and
4. Charges for miscellaneous expenses incurred by the State while at a Recovery Site, for use of items such as supplies, materials, and storage media or for use of office equipment, telephone, and facsimile.



Yearly Charges Summary

<i>Description</i>	Year 1 (6/1/2013-5/31/2014)	Year 2 (6/1/2014-5/31/2015)	Year 3 (6/1/2015-5/31/2016)
HP Enterprise (HRMN, DCDS, MIDB, Tape)	44,020.32	44,020.32	44,020.32
HRMNPW1	5,957.52	5,957.52	5,957.52
LBI/Crystal	4,485.84	4,485.84	4,485.84
HRMNESPA1	19,984.08	19,984.08	19,984.08
Oracle Key Management Appliance	5,934.00	5,934.00	5,934.00
Recovery Site	5,000.00	5,000.00	5,000.00
DS-3 Circuit (inc.router / switches / monitoring – from Table C)	93,384.00	93,384.00	93,384.00
Rehearsal Time (Two [2] 48-contiguous-hour Rehearsals per year)	23,040.00	23,040.00	23,040.00
Base Service Fee	4,200.00	4,200.00	4,200.00
Tape Handlers	8,010.00	8,010.00	8,010.00
Total	\$214,015.76	\$214,015.76	\$214,015.76

Total 3 Year Cost - \$630,047.28

<i>Description</i>	Optional Year 4 (6/1/2016-5/31/2017)	Optional Year 5 (6/1/2017-5/31/2018)	Optional Year 6 (6/1/2018-5/31/2019)	Optional Year 7 (6/1/2019-5/31/2020)
HP Enterprise (HRMN, DCDS, MIDB, Tape)	44,020.32	44,020.32	44,020.32	44,020.32
HRMNPW1	5,957.52	5,957.52	5,957.52	5,957.52
LBI/Crystal	4,485.84	4,485.84	4,485.84	4,485.84
HRMNESPA1	19,984.08	19,984.08	19,984.08	19,984.08
Oracle Key Management Appliance	5,934.00	5,934.00	5,934.00	5,934.00
Recovery Site	5,000.00	5,000.00	5,000.00	5,000.00
DS-3 Circuit (inc.router / switches / monitoring – from Table C)	93,384.00	93,384.00	93,384.00	93,384.00
Rehearsal Time (Two [2] 48-contiguous-hour Rehearsals per year)	23,040.00	23,040.00	23,040.00	23,040.00
Base Service Fee	4,200.00	4,200.00	4,200.00	4,200.00
Tape Handlers	8,010.00	8,010.00	8,010.00	8,010.00
Total	\$214,015.76	\$214,015.76	\$214,015.76	\$214,015.76



Monthly Charges Summary – Table B

<i>MONTHLY CHARGES</i>	Total	HP Ent.	Oracle KMA	Sun-440	Dell	DS3	Recovery Site - Rehearsal Time - Base & Tape Handler fees
Total Monthly Charge:	\$17,878.65	4,164.82	494.50	1,665.34	373.82	7,782.00	3,354.17
*Minimum Total Monthly Charge:	N/A						
<i>RECOVERY CHARGES</i>							
Initial Recovery Charge:	\$20,163.52 per customer site/per incident						
Day(s) Included in Initial Recovery Charge:	90 days						
Daily Recovery Charge per day thereafter:	Day 91 daily usage fees begin: \$3000.00 daily usage fee per customer site OR 10% of the monthly contract value whichever is greater						
<i>RECOVERY EXERCISE</i>							
Initial Contract Period Year 1 – Recovery Exercise Allowance Hours:	96 hours (allowing for two 48hr rehearsals)						
Number of Exercises:	2						
Each subsequent twelve-month period – Recovery Exercise Allowance Hours:	96 hours (allowing for two 48hr rehearsals)						
Number of Exercises:	2						
Additional Recovery Exercise time, per 4-hr block:	Please note that HP provides 8hr blocks at \$240 per 8hr block. We do not offer 4 hour blocks.						
Additional Recovery Exercises, per exercise:	Based on availability and amount of 8hr blocks required. \$240 per 8 hour block.						



Hot Site Equipment Details – Table C

Hot Staged hosting equipment

Host	Equipment or Service Requirement Description	Quantity	Monthly Cost	Annual Cost
HRMN	HP BL870c	1	\$1,045.52	\$12,546.24
	1.73 GHz processors	12		
	Memory GB	96		
	STK SL3000-B w/ 1 x T10000 tape drive(B drive with encryption enabled)	1	Calculated below in Tape Library Unit row	Calculated below in Tape Library Unit row
	Network minimum Gig-Ethernet wired	1		
	HP DVD-ROM drive	1		
	SAN Application disk EMC GB	1776		
	Internal OS disk GB	2 x 300		
	HP-UX 11i V3 (11.31)			
	Dat 160 drive	1		
MIDB	HP BL860c	1	\$987.92	\$11,855.04
	1.33 GHz processors	8		
	Memory GB	96		
	STK SL3000-B w/ 1 x T10000 tape drive(B drive with encryption enabled)	1	Calculated below in Tape Library Unit row	Calculated below in Tape Library Unit row
	Network minimum Gig-Ethernet wired	1		
	HP DVD-ROM drive	1		
	SAN Application disk EMC GB	1584		
	Internal OS disk GB	2 x 300		
	HP-UX 11i V3 (11.31)			
	DAT 160 Drive	1		
DCDS	HP BL860c	1	\$641.96	\$7,703.52
	1.33 GHz processors	4		
	Memory GB	48		
	STK SL3000-B w/ 1 x T10000 tape drive(B drive with encryption enabled)	1	Calculated below in Tape Library Unit row	Calculated below in Tape Library Unit row
	Network minimum Gig-Ethernet wired	1		
	HP DVD-ROM drive	1		
	SAN Application disk EMC GB	624		
	Internal OS disk GB	2 x 146		
	HP-UX 11i V3 (11.31)			
	DAT 160 Drive	1		
Tape Library Unit	STK SL3000-B tape library with a minimum of 3 T10000	1	\$992.96	\$11,915.52



Host	Equipment or Service Requirement Description	Quantity	Monthly Cost	Annual Cost
	drivesHP will provide: StorageTek T10000 Tape Drive (three B drives with encryption enabled)			
	CD-ROM Drive	1		
	Network Interfaces Gig-E wired minimum	3		
HRMNESPA1	SUNW SPARC-Enterprise-T5120	1	\$1,665.34	\$19,984.08
	1.2 GHz CPU	4		
	Memory GB	16		
	Network Interface Gig-E	1		
	SAN application disk GB	0		
	Internal OS disk GB	4 x 73		
	Solaris 10 OS			
HRMNPW1	HP rx2660 server	1	\$496.46	\$5,957.52
	1.50 GHz CPU	2		
	Memory GB	8		
	Gig-E network interface	1		
	SAN application disk GB	0		
	Internal OS disk GB	2 x 146		
	HP-UX 11i V3 (11.31)			
Lawson Business Intelligence (LBI) and LBI Crystal	Dell PowerEdge R610 (HP to provide DL type server)	2	\$373.82	\$4,485.84
	2.66 GHz CPU	2		
	Memory GB	8		
	Windows 2008 R2 OS	1		
	Internal storage RAID 5	4 x146 GB		
Oracle Key Management Appliance	Part Number = CRYPTO-KMA-23 Oracle Key Manager Appliance		\$494.50	\$ 5,934.00
Network connectivity at hot site	Dedicated DS3 Circuit between State of Michigan data center (517-335) and HP Alpharetta, GA data center. Client is required to supply termination equipment at	1	\$7,782.00	\$ 93,384.00



Host	Equipment or Service Requirement Description	Quantity	Monthly Cost	Annual Cost
	State facilities, including routers and switch gear required.			
	Cisco router-based unit	1		
	Onboard:			
	100 MB FD Ethernet port	1		
	HSSI port	1		
	Serial ports	3		
	Cisco switch – base unit	1		
	- Gigabyte capable blade with minimum 24 ports	1		
	RSM (Route Switch Module)	1		
	Internet Access (T1)	1		
	Cisco ASA 5540 VPN/Firewall	1		
Tape Handler	Tape handler at time of rehearsal or disaster – Optional		\$667.50	\$8,010.00
Service Fee			\$350.00	\$4,200.00
Recovery Site			\$416.66	\$5,000.00
Support Staff required:	(Any staffing not included in base contract costs which must be scheduled and billed separately.)			
	DR Consulting	1		
	Technical Consulting	1		
	Computer Operator(s)	1		
	Tape Handlers	1		
Testing windows	Semi-annual 48 hours in duration	2 events	\$1,920.00/monthly	\$23,040.00



HOT SITE RECOVERY: Define **all** charges for using the disaster recovery services, including but not limited to the hot site and network facilities, during a declared disaster. Indicate the maximum stay in the hot site facility and provide the data in the following table:

	Per Incident Hot Site	Per Incident Network
Maximum Stay in Days	No maximum set.	N/A
Alert Declaration Fee (if applicable)	\$0	N/A
Declaration Fee (Initial Recovery Charge)	\$20,163.52 per customer site/per incident	N/A
Daily Usage Fee: First 24 Hours	\$0 (first 90 days no daily usage fees)	N/A
Daily Usage Fee: 24-48 Hours	\$0 (first 90 days no daily usage fees)	N/A
Daily Usage Fee (Daily Recovery Charge): additional per day charge	Day 91 daily usage fees begin: \$3000.00 daily usage fee per customer site OR 10% of the monthly contract value whichever is greater	N/A
Maximum stay in hot site facility	No maximum set.	N/A

***NOTE:** This usage fee must include the total cost for all contract services including hot site and network facilities.

TEST TIME Charges

Test time allowed per year	Hours:	<u>96 Hours</u>
Test time fee's, including network	96 hours:	<u>\$23,040.00 per year/included in solution pricing</u>
Beyond 96 hours (per 8 hours):		<u>\$240.00 per 8 hour block</u>
*Additional Hot Site Test Charge (per 8 hours)		<u>\$240.00 per 8 hour block (based on availability)</u>
*Additional Hot Site Test Charge (per exercise – 48 hours)		<u>\$17,280.00 (based on availability)</u>
Additional Network Test Charge (per 8 hours)		<u>\$N/A</u>
Additional Charges for Support personnel		<u>\$N/A</u>
* (over allowed annual test time)		

Support Staffing Charges

Any staffing costs or surcharges not included within other line items should be detailed here.

		Onsite hourly charge (fully loaded)	Offsite hourly charge (fully loaded)
DR Consulting	Per FTE		
Server Technical Consulting	Per FTE		
Network Technical Consulting	Per FTE		
Computer Operator(s)	Per FTE		
Tape Handlers	Per FTE	Provided as part of solution (not based on hourly rate)	Provided as part of solution (not based on hourly rate)



Network connectivity Charges

Detail costs for DS-3 level connectivity from HP point of presence to State of Michigan point of presence.

Setup fees	Units	reoccurring interval	Cost
Setup fees	0	One time	\$ 0
Monthly charges	60	Monthly	\$ 7,782.00
Costs for Test time activation	N/A		\$ NA
*Costs for disaster declaration activation (Initial Recovery Charge)			\$ NA
Any other costs or fees	60	Monthly	\$ NA

* Included above in declaration fee



Attachment B - Instructions for Disaster Declaration

The following are Instructions for Disaster Declaration and Hardware Configuration of Recovery Facility in Attachment B of the Contract.

Instructions for Disaster Declaration

TO DECLARE A DISASTER CALL 877-464-6419 or 281-927-0297

You will reach the HPES Response Center. The center is staffed 24 hours a day, seven days a week, including holidays. Your call will activate the procedures to put the HPES recovery staff into action to assist you in recovering your business.

Responsibility	Action
Customer	<p>Authorized Caller List</p> <p>At commencement of service, you must provide to HPES a written list of at least three of your personnel who have authority to declare a disaster on behalf of your company. (HPES will provide an Authorized Caller List document to be completed upon contract signature). We recommend that at least one of the persons listed be located outside the building housing your data center. The list should provide primary and alternate telephone numbers and should be reviewed on a regular basis.</p>
Customer	<p>Initial Notification</p> <p>To declare a DISASTER call 877-464-6419 or 281-927-0297</p> <p>Call this number anytime of the day to inform HPES of a disaster. When making a disaster notification, the caller should provide the following information:</p> <ul style="list-style-type: none"> • Company name • Caller’s name • Phone number & alternate number to be reached within the hour • Nature of disaster • Location of affected site • HP BRS System Identifier (if known) (See HP BCRS Attachment.) • Estimated time of arrival at HPES Recovery Facility or Alternate Site (if known) • Address of Alternate Site (if applicable)
HP	<p>Disaster Verification</p> <p>HPES response center personnel record information provided by caller including date, time, and name of person who received the call. Authorized Caller List is used to verify disaster declaration.</p>
HP	<p>Staff Notification</p> <p>The HPES response center personnel immediately notify an HP Business Continuity & Recovery Services representative and delivery staff.</p>
HP	<p>System Preparation</p> <p>The HP BCRS delivery staff will direct activities planned in advance to ready your Subscribed Configuration(s), including ensuring that the system is configured to an OS level and that primary volumes are configured.</p>
Customer	<p>Written Notification</p> <p>Customer must follow up verbal notification of the disaster with written notification within 48 hours of the verbal notification to HPES. Send your written notification to:</p> <p>HP Business Continuity & Recovery Services email to: team.brs@hp.com</p>



Attachment C - Hardware Configuration of Recovery Facility

Section Name	Section Identifier Detailed Description of Hardware Component(s)	Quantity
Tape Handlers for testing & disaster	HP Tape Handling	1

Subscribed Service – BRS Critical

Section Name	Section Identifier Detailed Description of Hardware Component(s)	Quantity
Mandatory Service	BRS Site Service Charge	1
HRMN	HP Integrity BL870ci2 (1 blade, includes enclosure)	1
HRMN	HP Integrity 870ci2 Itanium 1.73 Ghz Single-Core	12
HRMN	HPUX 11i V3 (11.31) OS	1
HRMN	HP C-Class Memory – 1GB	96
HRMN	Disk – 1 GB raw	600
HRMN	XP 1 GB Raw Disk	1776
HRMN	LAN,10/100/1000 BASE-T Interface – 1 Port	1
HRMN	Fibre Channel Interface	2
HRMN	DAT 160	1
MIDB	HP Integrity BL870ci2 (1 blade, includes enclosure)	1
MIDB	HP Integrity 870ci2 Itanium 1.73 Ghz Single-Core	8
MIDB	HPUX 11i V3 (11.31) OS	1
MIDB	HP C-Class Memory – 1GB	96
MIDB	Disk – 1 GB raw	600
MIDB	XP 1 GB Raw Disk	1584
MIDB	LAN,10/100/1000 BASE-T Interface – 1 Port	1
MIDB	Fibre Channel Interface	2
MIDB	DAT 160	1
DCDS	HP Integrity BL870ci2 (1 blade, includes enclosure)	1
DCDS	HP Integrity 870ci2 Itanium 1.73 Ghz Single-Core	4
DCDS	HPUX 11i V3 (11.31) OS	1
DCDS	HP C-Class Memory – 1GB	48
DCDS	Disk – 1 GB raw	292
DCDS	XP 1 GB Raw Disk	624
DCDS	LAN,10/100/1000 BASE-T Interface – 1 Port	1
DCDS	Fibre Channel Interface	2
DCDS	DAT 160	1



Section Name	Section Identifier Detailed Description of Hardware Component(s)	Quantity
T10K Library	StorageTek T10000 Tape Drive (B drives with encryption enabled)	3
T10K Library	Tape Library - Slots	30
HRMNESPA1	Sun Sparc Enterprice T5120	1
HRMNESPA1	UltraSPARC T2 -1.4GHz Eight-Core	4
HRMNESPA1	Solaris 10	1
HRMNESPA1	Sun Memory for Low-End SunFires - 1 GB	16
HRMNESPA1	Fiber-Attached Storage (JBOD) 1 GB Raw Disk	292
HRMNESPA1	GIG-E	1
HRMNPW1	rx2660 - 1.6 GHz	1
HRMNPW1	rx2660 1.6 GHz Single-core processor	2
HRMNPW1	HP-UX 11i for Integrity Servers	1
HRMNPW1	rx16XX, rx26xx, rx36xx, rx46xx, rx56xx, rx66xx Memory - 1GB	8
HRMNPW1	Disk - 1 GB raw	292
HRMNPW1	LAN,10/100/1000 BASE-T Interface - 1 Port	1
HRMNPW1	Fibre Channel Interface	1
LBI	HP ProLiant DL380 G5	1
LBI	Single-Core Xeon 2.66 GHz Processor	2
LBI	Windows Server 2008 R2	1
LBI	Intel Server Memory - 1 GB	8
LBI	Disk - 1 GB raw(4 x 146 GB @ RAID 5)	584
LBI	LAN,10/100/1000 BASE-T Interface - 1 Port	1
LBI	Fibre Channel Interface	2
LBI Crystals	HP ProLiant DL380 G5	1
LBI Crystals	Single-Core Xeon 2.66 GHz Processor	2
LBI Crystals	Windows Server 2008 R2	1
LBI Crystals	Intel Server Memory - 1 GB	8
LBI Crystals	Disk - 1 GB raw(4 x 146 GB @ RAID 5)	584
LBI Crystals		100
LBI Crystals	LAN,10/100/1000 BASE-T Interface - 1 Port	1
LBI Crystals	Fibre Channel Interface	2



Section Name	Section Identifier Detailed Description of Hardware Component(s)	Quantity
Oracle Key Management Appliance	Oracle Key Manager Appliance Part Number CRYPTO-KMA-23: includes pre-loaded key manager software and Solaris software(key manager software needs to be version 2.5)	1
Internet Access	Internet Access (T1/DS1)	1
Internet Access	Cisco ASA 5540 VPN/Firewall	1
REHEARSALS	96 total hours of rehearsal time per year (can be used as 48hr contiguous rehearsals twice per year)	1



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of three (3) years beginning June 1, 2013 through May 31, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.130**) 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 four (4) additional one (1) year periods.

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under 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 also 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, which may be modified or amended only by a formal Contract amendment.



2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Technology, Management and Budget, Procurement and other state agencies (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:

Steve Motz
Buyer
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: motzs@michigan.gov
Phone: 517-241-3215



2.022 Contract Compliance Inspector

The Contract Compliance Inspector named in section 1.202, shall 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.**

2.023 Project Manager

See 1.202

2.024 Change Requests

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the 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, and before commencing performance of the requested activities, that it believes the requested activities 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 shall be conclusively considered to be in-scope Services/Deliverables, 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 shall 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 shall 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 shall be governed by the Change Request procedure in this Section.

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

(1) Change Request at State Request

If the State should require 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 shall 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 shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. 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 shall 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 shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.
- (4) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under 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 must 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:

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

Contractor:

Jamie Trierweiler
Jamie.Trierweiler@hp.com

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must 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 must 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 Contractor any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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



2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent 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

2.036 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").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under 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 shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each 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.
- (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.



(d) All invoices should 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 DTMB Procurement. 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 should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government may make progress payments to the 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 any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The 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 shall 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 shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes.



In applying treasury regulations defining “two 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 or 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 shall 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 shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. 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, shall 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 must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall 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 shall not delegate any duties under this Contract to a Subcontractor unless DTMB Procurement has given written consent to such delegation. The State shall 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 shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the 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 shall 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 shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall 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 shall 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 shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, and 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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

2.076 Approved Subcontractors

No Subcontractors will be used for this solution. Any modifications to this section, will require a formal Change Notice.

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements 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 must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor 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.

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

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI DATA Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor will contact the Department of Technology, Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security



review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor will continue to treat cardholder data as confidential upon Contract termination.

The Contractor will provide the Department of Technology, Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor will advise the Department of Technology, Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.

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 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.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For four years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

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



2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under 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 infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (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 RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.
- (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 DTMB Procurement.

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operates and performs to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of (1) one year commencing upon the first day following Final Acceptance.

Within 14 business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.



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. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.126 Equipment to be New

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

2.127 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, shall 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 shall 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

The Contractor must provide a certificate of insurance evidencing coverage as indicated below. The insurance must protect the State from claims that may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

General Liability insurance coverage maintained relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for the coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See www.michigan.gov/dleg.



The Contractor is required to maintain the type and amount of insurance checked below:

- 1. Commercial General Liability with the following coverage:
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit

The Contractor must include 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 insurance policies contain a waiver of subrogation by the insurance company.

- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must maintain auto liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor’s business with limits of \$1,000,000 combined single limit for bodily injury and property damage per accident.

The Contractor must include 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.

- 3. Workers’ compensation coverage must be provided according to applicable laws governing the employees and employers work activities. If a self-insurer provides the applicable coverage, a certificate of insurance must be provided of approved self-insured authority by the applicable jurisdiction. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees’ activities occur.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- 4. Employers liability insurance with the following limits:
 \$100,000 bodily injury by accident each accident
 \$100,000 bodily injury by disease each employee
 \$500,000 bodily injury by disease policy limit

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor’s insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor’s liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “Certificates”). The Certificate must be on the standard “accord” form or equivalent. **The Contract Number or the Purchase Order Number must be shown on the Certificate Of Insurance To Assure Correct Filing.** The Contractor must include the State and its agents, officers and employees as additional insured under each commercial



general liability and commercial automobile liability policy. 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 Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The limits of coverage specified above are not intended, and must not be construed; to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all its deductibles with regard to the insurance.

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

To the extent permitted by law, the Contractor shall 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 settle, and hold harmless any claim against 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 such action or proceeding is based on a claim alleging that any Contractor Branded Products or Support (excluding Custom Products or Custom Support) supplied by the Contractor or its subcontractors under this Contract, infringes any United States patent, copyright, trademark or trade secret of any person or entity, in the country where they were sold, which is enforceable under the laws of the United States, if the State: (a) promptly notifies Contractor of the claim in writing; (b) cooperates with the Contractor in the defense of the claim; and (c) grants Contractor sole control of the defense or settlement of the claim.

In addition, should the equipment, software, commodity, or service, or its operation, Contractor Branded Products or Support become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense Contractor may (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably



available to the Contractor, Contractor Branded Products or Support; or (ii) replace or modify at Contractor's option. If Contractor determines that none of these options are not reasonably available to Contractor, then Contractor will issue customer a refund equal to;

1. the purchase price paid for the affected item if within one year of delivery, or the Customer's net book value thereafter, or
2. if the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by Customer for that Support.

Notwithstanding the foregoing, the Contractor shall have 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) Contractor's compliance with equipment developed based on written specifications of the State or third party designs, specifications, instructions or technical information; or (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 a third party; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract. (iv) the State's non-compliance with the Contract specifications, Statement(s) of Work or other related documents; or (v) the State's use with products, software, or services that are not Contractor Branded.

Contractor's entire liability for claims of intellectual property infringement are stated in this Section 2.144.

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 the 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 agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed (insert number of days based on criticalness of project) days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by 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 agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under 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 must 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

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

2.176 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 2.150**. 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 2.130**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment 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 must 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 is not 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 must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with DTMB Procurement, or designee, for the purpose of attempting 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 in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.



(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 DTMB Chief Procurement Officer, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section 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

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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



2.203 Workplace Safety and Discriminatory Harassment

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's 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 the amount paid for the product, support or services provided in the contract. 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 attorney's 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 must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i)



disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements 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 must make the following notifications to DTMB Procurement 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.
 - (2) Within 30 days if Contractor procures an entity that has a current contractual relationship with the State of Michigan, Contractor will notify the State and work with the State to Assign the contractual rights and obligations to Contractor.

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 must 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 must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.



2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreement (SLA) – Deleted NA

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of any Key Personnel

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed \$50,000.00 per individual.

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

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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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.

If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing State approval of a Deliverable, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part by notice to Contractor (and without the need to afford Contractor any further opportunity to cure). Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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 shall be provisional; that is, such approval shall 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, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must 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 Process for Approval of Custom Software Deliverables

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software



Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify Contractor of the deficiency by making an entry in an incident reporting system available to both Contractor and the State. Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from Contractor.

Within three (3) business days after the end of the State Review Period, the State will give Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section**.

2.256 Final Acceptance

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.260 Ownership

2.261 Ownership of Work Product by State – Deleted NA

2.262 Vesting of Rights – Deleted NA

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 will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MiDEAL (Michigan Delivery Extended Agreements Locally) – Deleted NA

2.282 State Employee Purchases – Deleted NA

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 must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor’s Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (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 must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State’s convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not 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 must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

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

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

2.300 Deliverables



2.301 Software

A list of the items of software the State is required to purchase for executing the Contract is attached. The list includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). The attachment also identifies certain items of software to be provided by the State.

2.302 Hardware

A list of the items of hardware the State is required to purchase for execution the Contract is attached. The list includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). The attachment also identifies certain items of hardware to be provided by the State.

2.303 Equipment to be New

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

2.304 Equipment to be New and 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, shall 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 shall remain consistent for the term of the Contract, unless DTMB Procurement has approved a change order pursuant to **Section 2.024**.

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 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 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 shall include, at no added cost to the State, design and performance so the State shall 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, shall 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 shall 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 shall 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 shall 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 shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

2.320 Software Licensing

2.321 Cross-License, Deliverables Only, License to Contractor

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

2.322 Cross-License, Deliverables and Derivative Work, License to Contractor

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State



has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

2.323 License Back to the State

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

2.324 License Retained by Contractor

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

2.325 Pre-existing Materials for Custom Software Deliverables

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

2.330 Source Code Escrow

2.331 Definition – Deleted NA

2.332 Delivery of Source Code into Escrow – Deleted NA

2.333 Delivery of New Source Code into Escrow – Deleted NA



2.334 Verification – Deleted NA

2.335 Escrow Fees – Deleted NA

2.336 Release Events – Deleted NA

2.337 Release Event Procedures – Deleted NA

2.338 License – Deleted NA

2.339 Derivative Works – Deleted NA



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
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.
RESERVED	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.



RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	Any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.
State Location	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	The practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.
Work in Progress	A Deliverable that has been partially prepared, but has not been presented to the State for Approval.
Work Product	Refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.