

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

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B3200115**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Sap National Security Services, Inc. 3809 West Chester Pike Newton PA, 19073	Kim Chappell	Kim.chappell@SAPNS2.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(484) 437-7342	*****5474

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Reid Sisson	517-241-1638	SissonR@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> Sap Software Licenses				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
June 27, 2013	December 20, 2015	5 - 1 Year	December 20, 2015	
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"/>	2 years	<input type="checkbox"/>		December 20, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$2,506,632.00		\$2,446,774.00	\$4,953,406.00	
<b>DESCRIPTION:</b> Effective December 7, 2015, the State exercises two options years and transfers \$2,446,774.00 to this contract from Contract 071B1300170 to cover maintenance and support for the software currently licensed. All other terms, conditions, specifications, and pricing remain the same. Per Contractor, Agency and DTMB Procurement agreement.				

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 and

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SAP Government Support Services, Inc. 3809 West Chester Pike Newtown, PA 19073	Kim Chappell	<a href="mailto:Kim.chappell@SAPNS2.com">Kim.chappell@SAPNS2.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(484) 437-7342	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Mark Lawrence	517-241-1640	<a href="mailto:Lawrencem1@michigan.gov">Lawrencem1@michigan.gov</a>
BUYER:	DTMB	Reid Sisson	517-241-1638	<a href="mailto:sissonr@michigan.gov">sissonr@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)			
<b>STATEWIDE SAP SOFTWARE LICENSES, MAINTENANCE, AND SUPPORT</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
1.5 years	June 27, 2013	December 20, 2015	5, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$2,506,632.00

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<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			<b>\$2,506,632.00</b>

This Contract is established as an assignment of the State's SAP Support Services from SAP Public Services, Inc. to SAP Government Support Services, Inc. (SAP-GSS), as allowed under Section 2.029 of Contract# 071B1300170, to provide Secure Enterprise Support to the State

**Notice of Contract #: 071B3200115**

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
SAP Government Support Services, Inc. Firm Name	Signature
Authorized Agent Signature	Jeff Brownlee, Chief Procurement Officer Name/Title
Authorized Agent (Print or Type)	DTMB Procurement Enter Name of Agency
Date	Date



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DEFINITIONS

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.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DMB	Michigan Department of 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.
Deleted – Not Applicable	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	Consulting and professional services including support of installation and implementation of the applicable SAP software
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.



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

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

The State of Michigan (State), through the Michigan Department of Technology, Management & Budget (DTMB), has issued this Contract for SAP software licenses (the “Software,” associated software maintenance/support, and related consulting and training services).

#### **1.002 BACKGROUND**

SAP software provides the framework to which all mainframe Tax and Revenue systems will transition in future projects.

Since 2006, State of Michigan has owned a perpetual license for the SAP software, Tax and Revenue Management for Public Sector. The software is run on State of Michigan hardware.

### **1.100 Scope Of Work And Deliverables**

#### **1.101 IN SCOPE**

Contractor must provide SAP supported software patches within 24 hours of request.

The support should include the all of the features of SAP’s SECURE ENTERPRISE SUPPORT maintenance offering.

The State reserves the right to purchase additional SAP maintenance and support. These additional purchases will require an amendment to the Contract and may require approval from the State Administrative Board.

#### **1.102 OUT OF SCOPE**

Hardware is out of scope.

#### **1.103 ENVIRONMENT**

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

#### **1.104 WORK AND DELIVERABLES**

The State of Michigan needs the following products and services.

1. Maintenance and Support for all Software licenses. Please refer to the Attachment A: SAP Secure Enterprise Support Addendum

“SAP offers a complete range of training courses at its training centers, at customer sites and via the Internet. The fees for training courses shown herein are applicable to courses available and held in the United States only. Details of courses as well as prices and conditions can be found in SAP’s Online Course Catalog and the SAP website, <http://www.sap.com/usa/services/education/index.epx>. Most of the classes shown are available onsite at the customer’s facility. SAP also offers a full range of end-user services including assessment, change management, end-user development services, performance support systems, training delivery and enabling tools.

The State of Michigan will receive a discount of five percent (5%) applicable to all invoices for Instructor Led Training, excluding travel and living expenses and equipment rentals. SAP America, Inc. is approved to invoice on behalf of SAP Public Services, Inc.”



## Roles and Responsibilities

### 1.201 Contractor Staff, Roles, And Responsibilities

#### A. Contractor Staff

Contractor shall comply with statutory and regulatory requirements, security standards, information privacy legislation, IRS regulations, and all applicable State of Michigan policies, practices, standards and guidelines with special attention to the following. The contractor must:

- Maintain and provide State Business Owner with a list of all employees working under the contract.
- Perform criminal history checks for each contractual employee assigned to work on the contract.
- Ensure that confidentiality agreements are completed and Disclosure training obtained by each contractor and sub-contractor employees with access to a State processing environment.
- Be responsible for complying with State and Treasury security and acceptable use policies, including the Department of Technology, Management and Budget (DTMB) Policy 1460.00.
- Not connect non-State of Michigan owned computer equipments to the State's network without DTMB screening for virus protection software, personal firewalls, security level, etc.
- Not use remote control software on any internal or external host personal computers or systems not specifically set up by DTMB staff.
- Maintain the confidentiality of information utilized or accessed in the course of work.
- Use State information and information resources solely for the purpose of the business agreement as provided in this Contract.
- Not share or disclose passwords to another person.
- Not store State confidential information on portable media and devices.
- Protect State information resources by limiting access to authorized users on a need to know basis and promptly deleting access when access is no longer appropriate or needed.
- Report any security breach immediately to the Business Owner or the Contract Compliance Inspector.
- Return or destroy all confidential information upon completion of the contract or departure of a contractor employee according to the methods specified by the State of Michigan.

Surrender all State identification badges, access cards, equipment and supplies immediately at the end of the contract or upon employee departure from project/contract.

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

The Contractor will provide and keep current 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 Contractor will provide an Account Manager to interact with the designated personnel from the State. The Account Manager will coordinate all of the activities of the Contractor personnel assigned to this project. The Contractor's Account Manager will work with the DTMB Project Manager on all issues surrounding the application and any on-going projects.

Contractor Account Manager is:

Annie Brown  
(301) 512-0580 –w  
(310) 512-050 – c  
(610) 661-9512 – fax  
Annie.brown@sap.com

#### B. On Site Work Requirements

##### 1. Location of Work

All work may be performed, completed and managed at the vendor's location and/or at a Michigan DTMB location.



2. Hours of Operation:
  - 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.
  - 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.
  - Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday or furlough pay.
3. Travel:
 

No travel, travel time or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
4. Additional Security and Background Check Requirements:
 

If required pursuant to Article 2, Section 2.091, Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

**1.202 State Staff, Roles, and Responsibilities**

The State project team will consist of a DTMB Project Manager. The DTMB Project Manager will be responsible for the State’s infrastructure and coordinate with the Contractor in determining the system configuration. The DTMB Project Manager will be the point of contact for all SAP software applications matters.

Name	Agency/Division	Title
David Gilliland	DTMB	DTMB Project Manager

The named Contract Administrator’s duties include support and management of the Contract.

Name	Agency/Division	Title
Mark Lawrence	DTMB Purchasing Operations	Contract Administrator

**1.203 Other Roles And Responsibilities - Reserved**

**1.300 Project Plan - RESERVED**

**1.400 Project Management**

**1.401 Issue Management – Reserved**

The Contractor’s Project Manager will work with the DTMB Project Manager to maintain a current issue list with any unresolved issues as determined by the DTMB Project Manager.

**1.402 Risk Management – Reserved**

**1.403 Change Management – Reserved**

**1.500 Acceptance – Reserved**

**1.600 Compensation and Payment**

**1.601 Compensation and Payment**

Contractor will be compensated annually in advance for current year maintenance.



If Contractor reduces its list prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's DTMB Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect.

#### Travel

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

#### Invoicing

Contractor will submit properly itemized invoices to "Bill To" Address on Purchase Order. Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price;
- Payment terms, including any available prompt payment discount; and
- Worksheet/timesheet identifying hours and hourly rate must be provided for any consulting services.



## **Article 2 - Terms and Conditions**

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

#### **2.001 Contract Term**

This Contract is for a period of five (5) years beginning December 21, 2010 through December 20, 2015. All outstanding Purchase Orders must also expire upon the termination for any of the reasons listed in Section 2.150 of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, shall remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 Options to Renew**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to five (5) additional two-year periods.

#### **2.003 Legal Effect**

Contractor accepts this Contract by signing two copies of the Contract and returning them to the Purchasing Operations. 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 shall not be liable for costs incurred by Contractor or payments 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), 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 must issue an approved written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor will be required to furnish all such materials and services as may be ordered during the Contract period.

#### **2.006 Order of Precedence**

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

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

Notwithstanding the foregoing, with respect to software license rights granted by SAP hereunder, such rights are described in the Restated and Amended Software License Agreement and applicable Appendices thereto; in the event of conflict between the terms of the Restated and Amended Software License Agreement and an applicable Appendix, the applicable Appendix shall control.

**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 – Deleted NA****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, Purchasing Operations (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

Reid Sisson, Buyer  
Purchasing Operations  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909

**2.022 Contract Compliance Inspector**

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

Mark Lawrence, Contract Administrator  
Department of Technology, Management and Budget  
Mason Bldg, 2<sup>nd</sup> Floor  
lawrencem1@michigan.gov  
517-241-1640

**2.023 Project Manager**

The following individual will oversee the project:

David Gilliland, Project Manager  
Department of Technology, Management and Budget  
gillilandd@michigan.gov  
517-636-5006

**2.024 Change Requests**

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

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

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such Services or providing such Deliverables, the Contractor 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 requires Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State 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 Contractor believe the proposed Change 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 shall include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If 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 shall 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 shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Purchasing Operations.
- (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  
 Purchasing Operations  
 Attention:  
 PO Box 30026  
 530 West Allegan  
 Lansing, Michigan 48909

Contractor: SAP Public Services, Inc.  
 Attention: Senior Director, Contracts  
 3999 West Chester Pike,  
 Newtown Square, PA 19073

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

**2.026 Binding Commitments**

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

**2.027 Relationship of the Parties**

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

**2.028 Covenant of Good Faith**

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

**2.029 Assignments**

Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department,



division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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

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

## **2.030 General Provisions**

### **2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the 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 Contract are to be released without prior written approval of the State and then only to persons designated.

### **2.032 Contract Distribution**

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

### **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 shall 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 – Deleted NA**

### **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 shall provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

## **2.040 Financial Provisions**

**2.041 Fixed Prices for Services/Deliverables**

Prices for all products and services (including hourly-based services) purchased under this Contract shall be based on fixed price amounts or rates.

**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**

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

**2.044 Invoicing and Payment – In General**

- (a) Each Statement of Work issued under this Contract 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 shall show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate.
- (c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) shall mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment 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 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 shall it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply



with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. 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 shall be made by electronic fund transfer (EFT).

#### **2.050 Taxes**

##### **2.051 Employment Taxes**

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

##### **2.052 Sales and Use Taxes**

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

#### **2.060 Contract Management**

##### **2.061 Contractor Personnel Qualifications**

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

##### **2.062 Contractor Key Personnel**

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State shall have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State shall provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not



include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) . 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.

### **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 shall 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 shall perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel shall, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected 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**

Subject to execution of mutually agreed non-disclosure agreements and adherence to Contractor's facility and systems access policies, if applicable, 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 shall 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 shall 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 shall 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 shall provide the Services/Deliverables directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor shall act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

#### **2.068 Contractor Return of State Equipment/Resources**

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

#### **2.070 Subcontracting by 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 shall 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 the Department of Technology, Management and Budget, Purchasing Operations 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 shall agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work shall not be counted for a time agreed upon by the parties.

##### **2.073 Subcontractor bound to Contract**

In any subcontracts entered into by 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 shall 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 shall 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.

**2.080 State Responsibilities****2.081 Equipment**

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

**2.082 Facilities**

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it shall not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the 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 shall be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations shall 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 shall be initiated by the State and shall be reasonably related to the type of work requested.

All Contractor personnel shall 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 shall be expected to agree to the State's security and acceptable use policies before the Contractor personnel shall be accepted as a resource to perform work for the State. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff shall 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 shall 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 – DELETED NA****2.100 Confidentiality**



### **2.101 Confidentiality**

Contractor and the State each acknowledge that the other possesses and shall 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 shall 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 shall (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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall provide all reasonable facilities and assistance for the State's representatives.

### **2.112 Examination of Records**

For three 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 shall 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 shall 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 shall 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 shall 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 shall meet to review each audit report promptly after issuance. The Contractor shall 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 shall 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 invoice documents provided to the State, then the amount in error shall 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 shall be due as a payment or refund within 30 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

## **2.120 Warranties**

### **2.121 Warranties and Representations**

The Contractor represents and warrants:

- (a) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (b) It is qualified and registered to transact business in all locations where required.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) All financial statements, reports, and other information furnished by Contractor to the State 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.
- (h) 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.
- (i) 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.
- (j) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

**2.122 Warranty of Merchantability – Deleted NA**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted NA**

**2.124 Warranty of Title – Deleted NA**

**2.125 Equipment Warranty – Deleted NA**

**2.126 Equipment to be New – Deleted NA**

**2.127 Prohibited Products – Deleted NA**

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 Purchasing Operations 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 proof of the minimum levels of insurance 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 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.

All insurance coverage provided 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 not less than any minimum 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](http://www.michigan.gov/dleg).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor’s policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

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

- 1. Commercial General Liability with the following minimum coverage:  
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations  
 \$2,000,000 Products/Completed Operations Aggregate Limit  
 \$1,000,000 Personal & Advertising Injury Limit  
 \$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that 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 have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor’s business for bodily injury and property damage as required by law.

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

- 3. Workers’ compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor’s domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. 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.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

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 minimum limits:  
\$100,000 each accident  
\$100,000 each employee by disease  
\$500,000 aggregate disease

### **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. All Certificate(s) are to be prepared and submitted by the Insurance Provider or Insurance Broker. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed 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 use commercially reasonable efforts to secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum 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 deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

### **2.140 Indemnification**

#### **2.141 General Indemnification**

To the extent permitted by law, the Contractor shall 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 – Deleted NA**



### **2.143 Patent/Copyright Infringement Indemnification**

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

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (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, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges.

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) equipment developed based on written specifications of the State; 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 (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

### **2.145 Continuation of Indemnification Obligations**

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

### **2.144 Indemnification Procedures**

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such 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 Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall 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 prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given



within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to 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 shall have the right to defend the claim in such 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 shall promptly reimburse the State for all such 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 shall 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) Deleted NA.
- (c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

### **2.153 Termination for Convenience**

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



### **2.154 Termination for Non-Appropriation**

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract shall be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by 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 shall 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 shall 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 licensed 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 shall comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. 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 30 days. These efforts must include, but are not limited to, those listed in Section 2.150.

#### **2.172 Contractor Personnel Transition**

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

#### **2.173 Contractor Information Transition**

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

#### **2.174 Contractor Software Transition – Deleted NA**



### **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. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.182.

#### **2.182 Cancellation or Expiration of Stop Work Order**

The Contractor shall resume work if the State cancels a Stop Work Order or if it expires. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the Stop Work Order results in an increase in the time required for, or in 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 shall be deemed to be a termination for convenience under Section 2.153, and the State shall pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to 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 operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to Section 2.060. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order 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 shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one 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.

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

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

(b) This Section 2.192 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 pursuant to 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 pursuant to 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 such that the damages to such 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 shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in Section 2.150 and 2.160, 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, 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 shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of 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 shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

## **2.204 Prevailing Wage – Deleted NA**

### **2.210 Governing Law**

#### **2.211 Governing Law**

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

#### **2.212 Compliance with Laws**

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 shall 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**

The Contractor's liability for damages to the State shall be limited to one times fees paid of the applicable SOW. The foregoing limitation of liability shall not apply to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor.

The State's liability for damages to the Contractor shall be limited to one times fees paid of the applicable SOW.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages.

#### **2.230 Disclosure Responsibilities**

##### **2.231 Disclosure of Litigation**

Contractor is subject to legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business. Details of such litigation can be found in filings made by SAP with the SEC which are publicly accessible through the SEC's EDGAR database on the Internet <http://www.sec.gov/edgar.shtml>.

##### **2.232 Call Center Disclosure – DELETED NA**



### **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 the State's interests thereto. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

### **2.240 Performance**

#### **2.241 Time of Performance**

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of Section 2.241, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the 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 – DELETED NA**

#### **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.

### **2.252 Contractor System Testing – DELETED NA**

### **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) 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 shall 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 – Deleted NA**

#### **2.256 Final Acceptance – Deleted NA**

##### **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**

Subject to Contractor's ownership of the Software and any Work Products delivered to the State under this contract, the State will continue to own its 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 shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State shall 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 shall immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the 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 shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor shall resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and 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 shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).



Labeling: Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--\\_00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--_00.html)

Refrigeration and Air Conditioning: The 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 – Deleted NA**

**2.302 Hardware – Deleted NA**

#### ***2.310 Software Warranties***

**2.311 Performance Warranty – Deleted NA**

**2.312 No Surreptitious Code Warranty – Deleted NA**

**2.313 Calendar Warranty – Deleted NA**

**2.314 Third-party Software Warranty – Deleted NA**

**2.315 Physical Media Warranty – Deleted NA**

#### ***2.320 Software Licensing***

**2.321 Cross-License, Deliverables Only, License to Contractor – Deleted NA**

**2.322 Cross-License, Deliverables and Derivative Work, License to Contractor – Deleted NA**

**2.323 License Back to the State – Deleted NA**

**2.324 License Retained by Contractor – Deleted NA**

**2.325 Pre-existing Materials for Custom Software Deliverables – Deleted NA**

#### ***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**



v.2 (04-09-2013)

Attachment 1: SAP SECURE ENTERPRISE SUPPORT ADDENDUM ("Addendum")  
effective July 1, 2013 ("Effective Date")

between

SAP GOVERNMENT SUPPORT AND SERVICES, INC. ("SAP GSS")

and

STATE OF MICHIGAN ("Licensee")

### SECURE ENTERPRISE SUPPORT

This Addendum is executed as of the effective date above by and between SAP Government Support and Services, Inc., a Delaware corporation with offices at 3809 West Chester Pike, Newtown Square, PA 19073, (hereinafter "SAP GSS") and State of Michigan with offices at 530 W. Allegan, Lansing, MI 48933 (hereinafter "Licensee").

WHEREAS, Licensee has entered the SAP Public Services, Inc. ("SAP") Software License Agreement, its Appendices, and Schedules thereto as Attachment 2 to Michigan Contract 017B1300170 dated December 21, 2010 (together, "the Agreement"); and

WHEREAS, SAP GSS provides through its employees and third party contractors the Secure Enterprise Support services described in this Addendum to licensees of the SAP Software; and

WHEREAS the parties agree that the terms and conditions of the Agreement specified above shall apply to this Addendum. All terms set forth in the Agreement and referred to herein shall have the same meaning as set forth in the Agreement unless otherwise specifically modified by this Addendum.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows.

This Addendum governs the provision of support services by SAP as further defined herein ("SAP Enterprise Support"), and the provision of secure support services by SAP GSS as further defined herein ("Secure Support"), together "Secure Enterprise Support," for all software licensed by Licensee under the Agreement (hereinafter collectively referred to as the "Enterprise Support Solutions"), excluding software to which special support agreements apply exclusively.

#### 1. Definitions:

1.1 "Go-Live" marks the point in time from when, after implementation of Enterprise Support Solution or an upgrade of Enterprise Support Solution, the Enterprise Support Solution can be used by Licensee for processing real data in live operation mode and for running Licensee's business in accordance with the Agreement.

1.2 "Licensee Solution" shall mean Enterprise Support Solutions and any other software licensed by Licensee from third parties provided such third party software is operated in conjunction with Enterprise Support Solutions.

1.3 "Production System" shall mean a live SAP system used for running Licensee's internal business operations and where Licensee's data is recorded.

1.4 "SAP Enterprise Support" shall mean the global support program delivered commercially by SAP as further defined herein.

1.5 "SAP Software Solution(s)" shall mean a group of one or multiple Production Systems running Licensee Solutions and focusing on a specific functional aspect of Licensee's business.

1.6 "Secure Enterprise Support" shall mean the support program delivered under this Addendum comprising SAP Enterprise Support and Secure Support as further defined herein.

1.7 "Secure Support" shall mean the secure support delivered commercially by SAP GSS as further defined herein, delivered in conjunction with SAP Enterprise Support.

1.8 "Service Session" shall mean a sequence of support activities and tasks carried out remotely to collect further information on an incident by interview or by analysis in a Production System resulting in a list of recommendations. A Service Session could run manually, as a self-service or fully automated.



1.9 "Top-Issue" shall mean issues and/or failures identified and prioritized jointly by SAP and Licensee in accordance with SAP standards which (i) endanger Go-Live of a pre-production system or (ii) have a significant business impact on Licensee's core Production System.

## 2. Scope:

SAP ENTERPRISE SUPPORT. Licensee may request and SAP shall provide through this Addendum, to such degree as SAP makes such services generally available in the Territory, SAP Enterprise Support services. SAP Enterprise Support is delivered by SAP globally and currently includes:

### Continuous Improvement and Innovation

- New software releases of the licensed Enterprise Support Solutions, as well as tools and procedures for upgrades.
- Support packages - correction packages to reduce the effort of implementing single corrections. Support packages may also contain corrections to adapt existing functionality to changed legal and regulatory requirements.
- For releases of the SAP Business Suite 7 core applications (starting with SAP ERP 6.0 and with releases of SAP CRM 7.0, SAP SCM 7.0, SAP SRM 7.0 and SAP PLM 7.0 shipped in 2008), SAP may provide enhanced functionality and/or innovation through enhancement packages or by other means as available. During mainstream maintenance for an SAP core application release, SAP's current practice is to provide one enhancement package or other update per calendar year.
- Technology updates to support third-party operating systems and databases. Available ABAP source code for SAP software applications and additionally released and supported function modules.
- Software change management, such as changed configuration settings or Enterprise Support Solutions upgrades, is supported for example with content and information material, tools for client copy and entity copy, and tools for comparing customization.
- SAP provides Licensee with up to five days remote support services per calendar year from SAP solution architects
  - to assist Licensee in evaluating the innovation capabilities of the latest SAP enhancement package and how it may be deployed for Licensee's business process requirements.
  - to give Licensee guidance in form of knowledge transfer sessions, weighted one day, for defined SAP software/applications or Global Support Backbone components. Currently, content and session schedules are stated at <http://service.sap.com/enterprisesupport>. Scheduling, availability and delivery methodology is at SAP's discretion.
- SAP gives Licensee access to guided self services as part of SAP Solution Manager Enterprise Edition, helping the Licensee to optimize technical solution management of selected Enterprise Support Solutions.
- Configuration guidelines and content for Enterprise Support Solutions are usually shipped via SAP Solution Manager Enterprise Edition. Best practices for SAP System Administration and SAP Solution Operations for SAP Software.
- SAP configuration and operation content is supported as integral parts of Enterprise Support Solutions.
- Content, tools and process descriptions for SAP Application Lifecycle Management are part of the SAP Solution Manager Enterprise Edition, the Enterprise Support Solutions and/or the applicable Documentation for the Enterprise Support Solutions.

### Advanced Support for Enhancement Packages and other SAP Software Updates

SAP offers special remote checks delivered by SAP solution experts to analyze planned or existing modifications and identify possible conflicts between Licensee custom code and enhancement packages and other Enterprise Support Solutions updates. Each check is conducted for one specific modification in one of Licensee's core business process steps. Licensee is entitled to receive two services from one of the following categories per calendar year per SAP Software Solution.

- **Modification Justification:** Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies standard functionality of Enterprise Support Solutions which may fulfill the Licensee's requirements (for details see <http://service.sap.com/>).



- Custom Code Maintainability: Based on Licensee's provision of SAP required documentation of the scope and design of a planned or existing custom modification in SAP Solution Manager Enterprise Edition, SAP identifies which user exits and services may be available to separate custom code from SAP code (for details see <http://service.sap.com/>).

#### Global Support Backbone

- SAP Service Marketplace - SAP's knowledge database and SAP's extranet for knowledge transfer on which SAP makes available content and services to licensees and partners of SAP only.
- SAP Notes on the SAP Service Marketplace document software malfunctions and contain information on how to remedy, avoid and bypass errors. SAP Notes may contain coding corrections that licensees can implement into their SAP system. SAP Notes also document related issues, licensee questions, and recommended solutions (e.g. customizing settings).
- SAP Note Assistant - a tool to install specific corrections and improvements to SAP components.
- SAP Solution Manager Enterprise Edition – as described in Section 2.4

#### Mission Critical Support

- Global message handling by SAP for problems related to Enterprise Support Solutions, including Service Level Agreements for Initial Reaction Time and Corrective Action (for more information refer to Section 2.1.1).
- SAP Support Advisory Center – as described in Section 2.2.
- Continuous Quality Checks – as described in Section 2.3.
- Global 24x7 root cause analysis and escalation procedures in accordance with section 2.1 below.
- Root Cause Analysis for Custom Code: For Licensee custom code built with the SAP development workbench, SAP provides mission-critical support root-cause analysis, according to the Global Message Handling process and Service Level Agreements stated in Sections 2.1.1, 2.1.2 and 2.1.3, applicable for priority "very high" and priority "high" messages. If the Licensee custom code is documented according to SAP's then-current standards (for details see <http://service.sap.com/>), SAP may provide guidance to assist Licensee in issue resolution

#### Other Components, Methodologies, Content and Community Participation

- Monitoring components and agents for systems to monitor available resources and collect system status information of the Enterprise Support Solutions (e.g. SAP EarlyWatch Alert).
- Pre-configured test templates and test cases are usually delivered via the SAP Solution Manager Enterprise Edition. In addition the SAP Solution Manager Enterprise Edition assists Licensee's testing activities with functionalities that currently include:
  - Test administration for Enterprise Support Solutions by using the functionality provided as part of the SAP Solution Manager Enterprise Edition
  - Quality Management for management of "Quality-Gates"
  - SAP-provided tools for automatic testing
  - SAP-provided tools to assist with optimizing regression test scope. Such tools support identifying the business processes that are affected by a planned SAP Software Solutions change and make recommendations for the test scope as well as generating test plans (for details see <http://service.sap.com/>).
- Content and supplementary tools designed to help increase efficiency, which may include implementation methodologies and standard procedures, an Implementation Guide (IMG) and Business Configuration (BC) Sets.
- Access to guidelines via the SAP Service Marketplace, which may include implementation and operations processes and content designed to help reduce costs and risks. Such content currently includes:
  - End-to-End Solution Operations: Assists Licensee with the optimization of the end-to-end operations of Licensee's SAP Software Solution.
  - Run SAP Methodology: Assists Licensee with application management, business process operations, and administration of the SAP NetWeaver® technology platform, and currently includes:
    - The SAP standards for solution operations



- The road map of Run SAP to implement end-to-end solution operations
- Tools, including the SAP Solution Manager Enterprise Edition application management solution. For more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>
- Participation in SAP's customer and partner community (via SAP Service Marketplace), which provides information about best business practices, service offerings, etc.

**2.1 Global Message Handling and Service Level Agreement (SLA).** When Licensee reports malfunctions, SAP supports Licensee by providing information on how to remedy, avoid and bypass errors. The main channel for such support will be the support infrastructure provided by SAP. Licensee may send an error message at any time. All persons involved in the message solving process can access the status of the message at any time. For further details on definitions of message priorities see SAP Note 67739. In exceptional cases, Licensee may also contact SAP by telephone. For such contact (and as otherwise provided) SAP requires that Licensee provide remote access as specified in Section 3.2(iii).

The following Service Level Agreements ("SLA" or "SLAs") shall apply to all Licensee support messages that SAP accepts as being Priority 1 and which fulfill the prerequisites specified herein. Such SLAs shall commence in the first full Calendar Quarter following the Effective Date of this Addendum. As used herein, "Calendar Quarter" is the three month period ending on March 31, June 30, September 30 and December 31 respectively of any given calendar year.

**2.1.1 SLA for Initial Response Times: Priority 1 Support Messages ("Very High").** SAP shall respond to Priority 1 support messages within one (1) hour of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support messages. A message is assigned Priority 1 if the problem has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. This is generally caused by the following circumstances: complete system outage, malfunctions of central SAP functions in the Production System, or Top-Issues.

**2.1.2 SLA for Corrective Action Response Time for Priority 1 Support Messages:** SAP shall provide a solution, work around or action plan for resolution ("Corrective Action") of Licensee's Priority 1 support message within four (4) hours of SAP's receipt (twenty-four hours a day, seven days a week) of such Priority 1 support message ("SLA for Corrective Action"). In the event an action plan is submitted to Licensee as a Corrective Action, such action plan shall include: (i) status of the resolution process; (ii) planned next steps, including identifying responsible SAP resources; (iii) required Licensee actions to support the resolution process; (iv) to the extent possible, planned dates for SAP's actions; and (v) date and time for next status update from SAP. Subsequent status updates shall include a summary of the actions undertaken so far; planned next steps; and date and time for next status update. The SLA for Corrective Action only refers to that part of the processing time when the message is being processed at SAP ("Processing Time"). Processing Time does not include the time when the message is on status "Customer Action" or "SAP Proposed Solution", whereas (a) the status Customer Action means the support message was handed over to Licensee; and (b) the status SAP Proposed Solution means SAP has provided a Corrective Action as outlined herein. The SLA for Corrective Action shall be deemed met if within four (4) hours of processing time: SAP proposes a solution, a workaround or an action plan; or if Licensee agrees to reduce the priority level of the message.

### **2.1.3 Prerequisites and Exclusions.**

**2.1.3.1 Prerequisites.** The SLAs shall only apply when the following prerequisites are met for all support messages: (i) in all cases except for Root Cause Analysis for Custom Code under Section 2, support messages are related to releases of Enterprise Support Solutions which are classified by SAP with the shipment status "unrestricted shipment"; (ii) support messages are submitted by Licensee in English via the SAP Solution Manager Enterprise Edition in accordance with SAP's then current support message processing log-in procedure which contain the relevant details necessary (as specified in SAP Note 16018 or any future SAP Note which replaces SAP Note 16018) for SAP to take action on the reported error; (iii) support messages are related to a product release of Enterprise Support Solutions which falls into Mainstream Maintenance or Extended Maintenance.



For Priority 1 support messages, the following additional prerequisites must be fulfilled by Licensee: (a) the issue and its business impact are described in detail sufficient to allow SAP to assess the issue; (b) Licensee makes available for communications with SAP, twenty four (24) hours a day, seven (7) days a week, an English speaking contact person with training and knowledge sufficient to aid in the resolution of the Priority 1 message consistent with Licensee's obligations hereunder; and (c) a Licensee contact person is provided for opening a remote connection to the system and to provide necessary log-on data to SAP.

**2.1.3.2 Exclusions.** For SAP Enterprise Support in particular the following types of Priority 1 messages are excluded from the SLAs: (i) support messages regarding a release, version and/or functionalities of Enterprise Support Solutions developed specifically for Licensee (including without limitation those developed by SAP Custom Development and/or by SAP subsidiaries) except for custom code built with the SAP development workbench; (ii) support messages regarding country versions that are not part of the Enterprise Support Solutions and instead are realized as partner add-ons, enhancements, or modifications is expressly excluded even if these country versions were created by SAP or an affiliate of SAP; (iii) the root cause behind the support message is not a malfunction, but a missing functionality ("development request") or the support message is ascribed to a consulting request; and (iv) support messages referred for handling under Secure Support.

#### **2.1.4 Service Level Credit.**

**2.1.4.1** SAP shall be deemed to have met its obligations pursuant to the SLAs as stated above by reacting within the allowed time frames in ninety-five percent (95%) of the aggregate cases for all SLAs within a Calendar Quarter. In the event Licensee submits less than twenty (20) messages (in the aggregate for all SLAs) pursuant to the SLAs stated above in any Calendar Quarter during the Enterprise Support term, Licensee agrees that SAP shall be deemed to have met its obligations pursuant to the SLAs stated above if SAP has not exceeded the stated SLA time-frame in more than one support message during the applicable Calendar Quarter.

**2.1.4.2** Subject to Section 2.1.4.1 above, in the event that the timeframes for the SLAs are not met (each a "Failure"), the following rules and procedures shall apply: (i) Licensee shall inform SAP in writing of any alleged Failure; (ii) SAP shall investigate any such claims and provide a written report proving or disproving the accuracy of Licensee's claim; (iii) Licensee shall provide reasonable assistance to SAP in its efforts to correct any problems or processes inhibiting SAP's ability to reach the SLAs; (iv) subject to this Section 2.1.4, if based on the report, an SAP Failure is proved, SAP shall apply a Service Level Credit ("SLC") to Licensee's next SAP Enterprise Support Fee invoice equal to one quarter percent (0.25%) of Licensee's SAP Enterprise Support Fee for the applicable Calendar Quarter for each Failure reported and proved, subject to a maximum SLC cap per Calendar Quarter of five percent (5%) of Licensee's SAP Enterprise Support Fee for such Calendar Quarter. Licensee bears the responsibility of notifying SAP of any SLCs within one month after the end of a Calendar Quarter in which a Failure occurs. No penalties will be paid unless notice of Licensee's well-founded claim for SLC(s) is received by SAP in writing. The SLC stated in this Section 2.1.4 is Licensee's sole and exclusive remedy with respect to any alleged or actual Failure.

**2.2 SAP Support Advisory Center.** For Priority 1 and Top-Issues directly related to the Enterprise Support Solutions, SAP shall make available a global unit within SAP's support organization for mission critical support related requests (the "Support Advisory Center"). The Support Advisory Center will perform the following mission critical support tasks: (i) remote support for Top-Issues – the Support Advisory Center will act as an additional escalation level, enabling 24X7 root cause analysis for problem identification; (ii) Continuous Quality Check service delivery planning in collaboration with Licensee's IT, including scheduling and delivery coordination; (iii) provides one SAP Enterprise Support report on request per calendar year; (iv) remote primary certification of the SAP Customer Center of Expertise if requested by Licensee; and (v) providing guidance in cases in which Continuous Quality Checks (as defined in Section 2.3 below), an action plan and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solutions.



As preparation for the Continuous Quality Check delivery through SAP Solution Manager Enterprise Edition, Licensee's Contact Person and SAP shall jointly perform one mandatory setup service ("Initial Assessment") for the Enterprise Support Solutions. The Initial Assessment shall be based upon SAP standards and documentation.

The designated SAP Support Advisory Center will be English speaking and available to Licensee's Contact Person (as defined below) or its authorized representative twenty-four hours a day, seven days a week for mission critical support related requests. The available local or global dial-in numbers are shown in SAP Note 560499.

The Support Advisory Center is only responsible for the above mentioned mission critical support related tasks to the extent these tasks are directly related to issues or escalations regarding the Enterprise Support Solutions.

**2.3 SAP Continuous Quality Check.** In case of critical situations related to the SAP Software Solution (such as Go Live, upgrade, migration or Top Issues), SAP will provide at least one Continuous Quality Check (the "Continuous Quality Check" or "CQC") per calendar year for each SAP Software Solution.

The CQC may consist of one or more manual or automatic remote Service Sessions. SAP may deliver further CQC's in cases where vital alerts are reported by SAP EarlyWatch Alert or in those cases where Licensee and the SAP Advisory Center mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact type and priorities of a CQC and the tasks of SAP and cooperation duties of Licensee, shall be mutually agreed upon between the parties. At the end of a CQC, SAP will provide Licensee with an action plan and/or written recommendations.

Licensee acknowledges that all or part of the CQC sessions may be delivered by SAP and/or a certified SAP partner acting as SAP's subcontractor and based on SAP's CQC standards and methodologies. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of CQC's hereunder.

Licensee acknowledges that SAP limits CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 5 working days before the planned delivery date. If Licensee fails to follow these guidelines, SAP is not obliged to deliver the yearly CQC to the Licensee.

#### **2.4 SAP Solution Manager Enterprise Edition under SAP Enterprise Support.**

2.4.1 SAP Solution Manager Enterprise Edition (and any successor to SAP Solution Manager Enterprise Edition provided hereunder) shall be subject to the Agreement and is solely for the following purposes under SAP Enterprise Support: (i) delivery of SAP Enterprise Support and support services for Licensee Solutions including delivery and installation of software and technology maintenance for Enterprise Support Solutions; and (ii) application lifecycle management for Licensee Solutions and for any other software components and IT assets licensed or otherwise obtained by Licensee from third parties provided such third party software, software components and IT assets are operated in conjunction with Enterprise Support Solutions and are required to complete the Licensee's business processes as documented in the solution documentation in SAP Solution Manager Enterprise Edition ("Additional Supported Assets"). Such application lifecycle management is limited solely to the following purposes:

- implementation, configuration, testing, operations, continuous improvement and diagnostics
- incident management (service desk), problem management and change request management as enabled using SAP CRM technology integrated in SAP Solution Manager Enterprise Edition
- administration, monitoring, reporting and business intelligence as enabled using SAP NetWeaver technology integrated in SAP Solution Manager Enterprise Edition. Business intelligence may also be performed provided the appropriate SAP BI software is licensed by Licensee as part of the Enterprise Support Solutions.
- For application lifecycle management as outlined under section 2.4.1(ii) above, Licensee does not require a separate Package license to SAP CRM. Licensee must hold appropriate Named User licenses to Use SAP Solution Manager.



2.4.2 SAP Solution Manager Enterprise Edition may not be used for purposes other than those stated above. Without limiting the foregoing restriction, Licensee shall not use SAP Solution Manager Enterprise Edition for (i) CRM scenarios such as service plans, contracts, service confirmation management, except as CRM scenarios are expressly stated in Section 2.4.1; (ii) SAP NetWeaver usage types other than those stated above or (iii) application life-cycle management and in particular incident management (service desk) except for Licensee Solutions and Additional Supported Assets and (iv) non-IT shared services capabilities, including without limitation HR, Finance or Procurement.

2.4.3 SAP, in its sole discretion, may update from time to time on the SAP Service Marketplace under <http://service.sap.com/solutionmanager> the use cases for SAP Solution Manager Enterprise Edition under this Section 2.4.

2.4.4 SAP Solution Manager Enterprise Edition shall only be used during the term of this Addendum and by Named Users licensed by Licensee subject to the licensed rights for the Software and exclusively for Licensee's SAP-related support purposes in support of Licensee's internal business operations. The right to use any SAP Solution Manager Enterprise Edition capabilities under SAP Enterprise Support other than those listed above is subject to a separate written agreement with SAP, even if such capabilities are accessible through or related to SAP Solution Manager Enterprise Edition. Notwithstanding the foregoing limitation on Named Users, Licensee shall be entitled to allow any of its employees to use web self service in the SAP Solution Manager Enterprise Edition during the term of this Addendum for the sole purpose of creating support tickets, requesting support ticket status and ticket confirmation directly related to the Licensee Solutions and Additional Supported Assets.

2.4.5 Use of SAP Solution Manager Enterprise Edition may not be offered by Licensee as a service to third parties even if such third parties have licensed SAP Software and have licensed Named Users; provided, third parties authorized to access the SAP Software under the Agreement may have access to SAP Solution Manager Enterprise Edition solely for SAP-related support purposes in support of Licensee's internal business operations under and in accordance with the terms of this Addendum.

**SECURE SUPPORT.** Licensee may request and SAP GSS shall provide, to such degree as SAP GSS makes such services generally available in the Territory, Secure Support services. Secure Support is delivered in the United States only and currently includes a secure remote connection, secure backoffice, secure support advisor, secure support setup, and certain secure continuous quality checks as specified herein.

**2.5 Secure Remote Connection and Secure Backoffice.** A US citizen-staffed secure backoffice located in a US facility shall be provided during the standard hours of 9:00AM to 6:00PM United States Eastern time, Monday through Friday, excluding holidays observed by SAP GSS ("Standard Hours") for the following Licensee site(s).

Lansing, Michigan

Under SAP Enterprise Support, Licensee messages are initially received and addressed by SAP's global support organization. When connection is needed to the Licensee network in cases where login is required for problem resolution, Licensee requires that login can only be performed by US citizen resources over an approved communication channel that terminates in the continental US. Under Secure Support, SAP GSS provides this secure channel and maintains a controlled area from which the secure connection will terminate in a GSS-provided, or if agreed a Licensee-provided, personal computer ("PC"). This PC shall contain and be prepared to run the agreed upon and Licensee-provided Client VPN software, which will enable the SAP GSS secure connection to the Licensee solution infrastructure for the provision of Secure Support. Licensee shall provide all required customer-specific hardware/software, remote secure connections and access permissions to its production systems for delivery of the Secure Support service by SAP GSS.

The following operational process applies for SAP GSS Backoffice message support:



1. Licensee is responsible for identification of issues, initial issue analysis performed by Licensee's support center, and opening of customer message tickets through SAP Service Marketplace or SAP Solution Manager under SAP Enterprise Support.
2. Under SAP Enterprise Support, SAP Global Support Centers provide the first level of SAP support to review, analyze and provide any known resolution to issues or provide global 24x7 root cause analysis and escalation procedures. SAP Global Development will be engaged as appropriate to determine a resolution or identify additional information needed from Licensee.
3. Under Secure Support, neither SAP Global Support Centers nor SAP Global Development is authorized to access Licensee's system directly and will be instructed in internal SAP procedures not to request such access. In the event access is required by SAP, the SAP GSS Secure Backoffice will be engaged through internal SAP procedures to continue issue resolution as authorized by Licensee and facilitate communication between Licensee and SAP Global resources.
4. Under Secure Support, resolutions to issues will be documented and made available to Licensee in accordance with SAP's standard procedures.

**2.6 Secure Support Advisor.** SAP GSS shall designate one (1) resource in the SAP GSS organization to be Licensee's Secure Support contact person (the "Secure Support Advisor"). The Secure Support Advisor shall perform the following support tasks: (i) assist Licensee in planning, coordinating, scheduling and delivering (in cooperation with Licensee) the Secure Support Setup and Secure Continuous Quality Checks described below; (ii) advising Licensee on the implementation of recommended actions resulting from delivery of SAP GSS Secure Support services; (iii) acting as an additional escalation contact for exception handling in the SAP Enterprise Support process; (v) providing guidance in cases in which Secure Continuous Quality Checks, an action plan, and/or written recommendations of SAP show a critical status (e.g. a red CQC report) of the Enterprise Support Solution, and (vi) providing access for remote certification of the SAP Customer Center of Expertise if requested by Licensee.

The Secure Support Advisor is available via telephone and email during the Standard Hours specified above. SAP GSS shall make available a substitute Secure Support Advisor during any periods where the designated Support Advisor is unavailable. All Services of the designated SAP Support Advisor shall be coordinated with Licensee's designated Secure Support Program Manager, as described in Section 3.1 below.

**2.7 Secure Support Setup.** Licensee and SAP GSS agree to jointly conduct an initial Secure Support Setup as part of Secure Support. The Secure Support Setup includes: (i) securing remote connectivity between Licensee and SAP GSS; (ii) reviewing best practices for collaboration with SAP GSS and SAP Active Global Support; (iii) reviewing Licensee solution landscape; and (iv) review of Licensee project roadmap.

**2.8 Secure Continuous Quality Checks.** Certain Secure Continuous Quality Checks shall be delivered through the secure remote connection established under Secure Support. Licensee shall coordinate such Secure Continuous Quality Checks with the Secure Support Advisor. In case of critical situations related to the SAP Software Solution (such as, implementation, upgrade, migration or Top Issues), SAP GSS will provide at least one Secure Continuous Quality Check (the "Secure Continuous Quality Check" or "Secure CQC") per year for each SAP Software Solution. The Secure CQC portfolio of services for licensees includes:

SAP GoingLive™ Check for an implementation project going productive.

SAP GoingLive™ Functional Upgrade Check for an upgrade to a higher release.

The CQC portfolio of services may be changed by SAP GSS from time to time. The CQC may consist of one or more manual or automatic remote Service Sessions. SAP GSS may deliver further Secure CQC's in cases where vital alerts reported by SAP EarlyWatch Alert or in those cases where Licensee and the Secure Support Advisor mutually agree that such a service is needed to handle a Top-Issue. Details, such as the exact priorities of a Secure CQC, shall be mutually agreed upon between the parties. At the end of



a Secure CQC, SAP GSS will provide Licensee with an action plan and/or written recommendations. Licensee agrees to provide appropriate resources, including but not limited to equipment, data, information, and appropriate and cooperative personnel, to facilitate the delivery of Secure CQC's hereunder.

In the event the Effective Date of this Addendum is after September 30<sup>th</sup> of the year in which the Effective Date occurs, Licensee shall not be entitled to receive the above mentioned Secure CQC services for the remainder of such calendar year.

Licensee understands and agrees that to the extent the SAP Software contains products and/or software components licensed or resold by SAP from a third party, the support of such third party is required to deliver a CQC.

Licensee acknowledges that SAP GSS limits Secure CQC re-scheduling to a maximum of three times per year. Re-scheduling must take place at least 20 working days before the planned delivery date.

**2.9 Licensee-Specific Security Requirements and Instructions.** The parties acknowledge that neither the SAP Enterprise Support nor Secure Support described herein contemplates the processing or storage of Licensee data, Licensee Proprietary Information, or Licensee customer information by SAP and SAP GSS, and that Licensee provides access to such information or data, if at all, solely to the extent necessary for SAP and SAP GSS to perform its obligations under this Addendum. Notwithstanding anything to the contrary herein, with respect to the SAP Enterprise Support and Secure Support delivered hereunder, Licensee may, in its sole discretion, and at any time, elect not to allow, or to otherwise limit: (a) remote access by SAP and SAP GSS, and/or (b) connectivity by and between Licensee and SAP and SAP GSS. Licensee acknowledges that Licensee's failure to establish remote access or connection as described in Section 3.2 below, or to limit such access, may lead to delays in message handling and the provision of corrections, or may render SAP and SAP GSS unable to provide the full scope of SAP Enterprise Support and Secure Support. Licensee shall not be entitled to any refund or credit of Secure Enterprise Support Fees paid, and SAP and SAP GSS shall not be held liable for any delay or inability to meet the support obligations set forth in this Addendum to the extent such delay or inability results from Licensee's limitation of access. Accordingly, this Section 2.9 describes the Licensee-specific security requirements that are mutually agreed to be applicable to this Addendum.

#### 2.9.1 Security Requirements Applicable to SAP Enterprise Support.

SAP provides information regarding its commercial security practices related to the global delivery of SAP Enterprise Support, including the technical and organizational measures implemented by SAP designed to ensure the lawful processing of personal data in accordance with EU data protection laws and any audits and certifications. Upon Licensee's written request, SAP shall provide its information document, "Security and Data Protection@SAP," for Licensee's review and information purposes. SAP agrees to comply with the "Security and Data Protection@SAP" information document. SAP represents that, to the best of its knowledge, it engages in best practices with respect to the hiring of its employees, in compliance with applicable local law and regulations, including administering background checks in certain locations, including such background checks as are consistent with best practices of SAP in the relevant location and consistent with applicable law.

#### 2.9.2 Security Requirements Applicable to Secure Support.

**2.9.2.1 Clearances and Representations.** SAP GSS represents that: (i) it is a subsidiary company of SAP AG and operates under a Proxy Agreement administered by the US Defense Security Service to mitigate foreign ownership, control, and influence; (ii) it has successfully completed security inspection process requirements of, and currently holds a Top Secret facility security clearance granted by, the US Department of Defense (DoD); and (iii) the SAP GSS employees assigned with responsibility for delivering Secure Support to Licensee hereunder have successfully completed the security clearance process requirements of, and currently hold Secret or Top Secret security clearances granted by, the DoD. During the term of this Addendum upon Licensee's written request the SAP GSS Facility Security Officer (FSO) shall verify such clearance(s) in writing to Licensee and promptly notify Licensee of any downgrade in status.



2.9.2.2 System Access Instructions. SAP GSS shall comply with Licensee’s requirements stated below for access to Licensee’s systems:

- a. Licensee prohibits remote access by, and disclosure of any data to SAP under SAP Enterprise Support
- b. SAP GSS shall treat any Licensee data, user access, passwords or system information provided by Licensee to SAP GSS as Proprietary Information under applicable provisions of the Agreement.
- c. Licensee shall control, and shall grant or limit secure remote access to SAP GSS at its sole discretion, and SAP GSS shall only access those systems that Licensee authorizes SAP GSS to access.
- d. In the event Licensee discloses classified, controlled unclassified, or sensitive Licensee data to SAP GSS as part of any authorized remote access, SAP GSS shall disclose such data only in accordance with the instructions provided by Licensee pursuant to Section 3.2 (xv) below.
- e. If access is granted by Licensee pursuant to Section 2.9.2.2 (c) above, Licensee shall provide SAP GSS personnel with any user authorizations and passwords to access its systems and may revoke or terminate such authorizations as Licensee deems appropriate from time to time. Licensee shall grant SAP GSS access to Licensee systems or personal information only if such access is essential for the performance of the support hereunder, and SAP GSS shall comply with Licensee’s instructions for such access.
- f. If onsite support is provided, Licensee requires that personnel delivering support onsite at Licensee facilities be approved by Licensee and adhere to Licensee’s reasonable requirements and rules for access, and for use of Licensee’s electronic resources. Licensee has the right to request removal or replacement of personnel at its sole discretion. Licensee understands and agrees that schedules, resource availability, and costs are impacted by delays in processing approvals for such access.
- g. Export Controls for Data. Licensee may disclose to SAP GSS as part of any authorized remote access, data which may be subject to export controls under 22 United States Code 2751 – 2796 (Arms Export Control Act) and 22 Code of Federal Regulations 120-130 (International Traffic in Arms Regulations) or 50 United States Code 2401 – 2420 (Export Administration Act) and 15 Code of Federal Regulations 768 – 799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as the “Export Laws and Regulations”). Provided Licensee identifies the data as being subject to such controls, SAP GSS shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder in handling any such data.

**3. Licensee’s Responsibilities.**

**3.1 Licensee Program Management.** In order to receive Secure Enterprise Support hereunder, Licensee shall designate a qualified English speaking Secure Enterprise Support Program Manager within its SAP Customer Center of Expertise and shall provide contact details (in particular e-mail address and telephone number) by means of which the Contact Person or the authorized representative of such Contact Person can be contacted at any time. The Secure Enterprise Support Program Manager shall cooperate with the designated SAP GSS Secure Support Advisor to administer the terms of this Addendum, and shall be Licensee’s authorized representative empowered to make necessary decisions for Licensee or bring about such decision without undue delay.

Contact Person Name	Postal Address	Email Address	Desk Telephone Number	Mobile Telephone Number
David Gilliland		GillilandG@michigan.gov	517-636-5006	

**3.2 Other Requirements.** In order to receive Secure Enterprise Support hereunder, Licensee must:  
 (i) Continue to pay all maintenance and support fees in accordance with the Agreement and this Addendum.



- (ii) Otherwise fulfill its obligations under the Agreement and this Addendum.
- (iii) For the SAP Enterprise Support global component of Secure Enterprise Support, provide and maintain remote access (subject to Section 2.9.1 above) via a technical standard procedure as defined by SAP and grant SAP all necessary authorizations, in particular for global problem analysis as part of global message handling. Such global remote access shall be granted without restriction regarding the nationality of the SAP employee(s) who process support messages or the country in which they are located. Licensee acknowledges that failure to grant access may lead to delays in message handling and the provision of corrections, or may render SAP unable to provide help in an efficient manner. Licensee understands that message tickets opened by Licensee through SAP Service Marketplace or SAP Solution Manager are initially processed through SAP Global Support Centers worldwide before routing for secure handling by SAP GSS. It is Licensee's responsibility to ensure that no sensitive information is transmitted when opening message tickets. The necessary software components must also be installed for support services. For more details, see SAP Note 91488.
- (iv) For the Secure Support component of Secure Enterprise Support, provide and maintain a secure remote connection (subject to Section 2.9.2 above) between the SAP GSS secure facility and Licensee's production systems via a technical standard procedure acceptable to SAP GSS; provide all required Licensee-specific hardware/software, if any, agreed for use by SAP GSS, and grant SAP GSS all necessary authorizations and permissions necessary for Secure Support delivery. Licensee acknowledges that SAP GSS is not able to fulfill its Secure Support obligations during periods of time when Licensee denies SAP GSS access to the Enterprise Support Solutions. In the event Licensee discloses Licensee data to SAP GSS as part of authorized secure remote access, and such data is rated classified, controlled unclassified, or sensitive as defined by the US National Industrial Security Program (NISPO), or is subject to US export control laws including ITAR and EAR, Licensee shall identify and provide its instructions to SAP GSS for the handling of such data, including its instructions for allowing access to such data by SAP.
- (v) Establish and maintain an SAP certified Customer COE meeting the requirements specified in Section 4 below.
- (vi) Have installed, configured and be using productively, an SAP Solution Manager Enterprise Edition system, with the latest patch levels for Basis, and the latest SAP Solution Manager Enterprise Edition support packages.
- (vii) Activate SAP EarlyWatch Alert for the Production Systems and transmit data to Licensee's productive SAP Solution Manager Enterprise Edition system. See SAP Note 1257308 for information on setting up this service.
- (viii) Perform the Initial Assessment as described in Section 2.2 and implement all recommendations of SAP classified as mandatory.
- (ix) Establish a global connection between Licensee's SAP Solution Manager Enterprise Edition installation and SAP and a connection between the Enterprise Support Solutions and Licensee's SAP Solution Manager Enterprise Edition installation. Licensee shall maintain the solution landscape and core business processes in Licensee's SAP Solution Manager Enterprise Edition system for all Production Systems and systems connected to the Production Systems. Licensee shall document any implementation or upgrade projects in Licensee's SAP Solution Manager Enterprise Edition system.
- (x) To fully enable and activate the SAP Solution Manager Enterprise Edition, Licensee shall adhere to the applicable documentation.
- (xi) Licensee agrees to maintain adequate and current records of all Modifications and, if needed, promptly provide such records to SAP.
- (xii) Submit all error messages via the then current SAP support infrastructure as made available by SAP from time to time via updates, upgrades or add-ons.
- (xiii) Inform SAP without undue delay of any changes to Licensee's installations and Named Users and all other information relevant to the Enterprise Support Solutions.
- (xiv) Provide, configure and maintain any Licensee-provided hardware/software and any Licensee-provided authorizations/permissions for SAP GSS personnel to provide Secure Support delivery without the need for SAP GSS personnel to travel to Licensee or other non-SAP GSS locations.



- (xv) Identify and mark any classified, controlled unclassified, or sensitive Licensee data that may be disclosed to SAP GSS in connection with the delivery of Secure Support and identify the safeguards Licensee requires from SAP GSS to protect such data and any procedures/limitations for allowing access to such data by SAP.
- (xvi) Licensee acknowledges that any additional background investigations or security clearances required by Licensee may limit the SAP GSS staff available to provide the delivery of Secure Support.

#### 4. Customer Center of Expertise.

**4.1 Role of the Customer Center of Expertise.** In order to leverage the full potential value delivered as part of SAP Enterprise Support, Licensee is required to establish a Customer Center of Expertise (“Customer Center of Expertise”, or “Customer COE”). The Customer COE is designated by Licensee as a central point of contact for interaction with the SAP support organization. As a permanent center of expertise, the Customer COE supports Licensee’s efficient implementation, innovation, operation and quality of business processes and systems related to the SAP Software Solution based on the Run SAP methodology provided by SAP (for more information on the Run SAP methodology, refer to <http://service.sap.com/runsap>). The Customer COE should cover all core business process operations. SAP recommends starting the implementation of the Customer COE as a project that runs in parallel with the functional and technical implementation projects.

**4.2 Basic Functions of the Customer COE.** The Customer COE must fulfill the following basic functions:

- Support Desk: Set-up and operation of a support desk with a sufficient number of support consultants for infrastructure/application platforms and the related applications during regular local working hours (at least 8 hours a day, 5 days (Monday through Friday) a week). Licensee support process and skills will be jointly reviewed in the framework of the service planning process and the certification audit.
- Contract administration: Contract and license processing in conjunction with SAP (license audit, maintenance billing, release order processing, user master and installation data management).
- Coordination of innovation requests: Collection and coordination of development requests from the Licensee and/or any of its affiliates provided such affiliates are entitled to use the Enterprise Support Solutions under the Agreement. In this role the Customer COE shall also be empowered to function as an interface to SAP to take all action and decisions needed to avoid unnecessary modification of Enterprise Support Solutions and to ensure that planned modifications are in alignment with the SAP software and release strategy.
- Information management: Distribution of information (e.g. internal demonstrations, information events and marketing) about Enterprise Support Solutions and the Customer COE within the Licensee’s organization.
- CQC and other remote services planning: Licensee regularly engages in a service planning process with SAP. The service planning starts during the initial implementation and will then be continued regularly.

**4.3 Customer COE Certification.** Licensee must establish a certified Customer COE upon the later to occur of the following: (i) within twelve (12) months after the Effective Date; or (ii) within six (6) months after Licensee has started using at least one of the Enterprise Support Solutions in live mode for normal business operations. To obtain the then-current primary Customer COE certification or re-certification by SAP, the Customer COE undergoes an audit procedure. Detailed information on the initial certification and re-certification process and conditions, as well as information on the available certification levels, is available on the SAP Service Marketplace (<http://service.sap.com/coe>).

#### 5. Secure Enterprise Support Fees.

Secure Enterprise Support Service at the site(s) specified above shall commence as of the first day of the month following initial delivery of the Software under Appendices to the Agreement, and shall be paid annually in advance. After the Initial Term (as defined in the applicable Appendix, or order documents under the Agreement), and subject to the Agreement and this Secure Enterprise Support Addendum, Secure Enterprise Support Service shall renew at the beginning of each calendar year for the subsequent one year period.



The annual Secure Enterprise Support Fee for the Software licensed under Appendices to the Agreement is priced at the then current Secure Enterprise Support Factor in effect (currently 22%) multiplied by the total Net License Fee for the licensed Software as specified in Appendices to the Agreement. SAP agrees that the Secure Enterprise Support Factor shall remain at 22% until December 31, 2016. Thereafter, the Secure Enterprise Support Factor is subject to change once during a calendar year upon ninety (90) days notice to Licensee. Secure Enterprise Support Fees are invoiced on an annual basis effective January 1 of a calendar year and payable Net 30 days from date of invoice. Any Secure Enterprise Support Fees due prior to January 1 are invoiced on a pro-rata basis for the given calendar year in effect. Secure Enterprise Support offered by SAP may be changed annually by SAP GSS at any time upon ninety (90) days prior written notice to Licensee. After the Initial Term, the Secure Enterprise Support Fees and any limitations on increases are subject to Licensee's compliance with the Customer COE requirements specified in Section 4 above.

The current annual Secure Enterprise Support Service Fee for the license Appendices in scope for this Addendum is.

		Maintenance Base	SES Factor	Annual SES Fees
1.	Appendix 1 (Tax & Revenue)	\$797,850	22%	\$175,527
2.	Appendix 1 (Adobe)	150,000	22%	33,000
3.	Appendix 2 (RWD)	34,389	22%	7,566
4.	Appendix 3 (Training Preferred Card Only)	N/A	N/A	N/A
5.	Appendix 4 (Addl Users)	253,968	22%	55,873
6.	Appendix 5 (BOBJ)	See Appendix 6	N/A	See Appendix 6
7.	Appendix 6 (BOBJ)	2,240,481	22%	492,906
8.	Appendix 7 (BOBJ Add-On)	843,750	22%	185,625
	TOTAL	\$4,320,438		\$950,497

By executing the Support Selection and Assignment Amendment of the Agreement and this Addendum, Licensee has elected to subscribe to Secure Enterprise Support under this Addendum as of the Effective Date for the license Appendices listed above, and in accordance with the Support Selection and Assignment Amendment, support under the Agreement will terminate.

Taxes. Fees and other charges described in this Addendum do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. With respect to state/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to SAP GSS prior to the execution of this Addendum. If SAP GSS is required to pay Taxes as a result of SAP GSS's performance under this Addendum, Licensee shall reimburse SAP GSS for any such Taxes. Licensee hereby agrees to indemnify SAP GSS for any such Taxes and, to the extent assessed because of Licensee's failure to pay such Taxes within the time and manner specified by written notice, related costs, interest and penalties paid or payable by SAP GSS.

Invoicing. Licensee's designated invoice recipient for invoices under this Addendum is:

Contact Person Name	Postal Address	Email Address	Desk Telephone Number	Mobile Telephone Number
DTMB Accounts Payable	P.O. Box 30026 Lansing, MI 48909	<u><a href="mailto:DTMB-Accounts-Payable@michigan.gov">DTMB-Accounts-Payable@michigan.gov</a></u>		

6. Delivery. Delivery of the Secure Enterprise Support hereunder will be made by making the support available for download or other electronic transmission to Licensee's location at: 530 W. Allegan, Lansing, MI 48933. Licensee agrees not to request any physical delivery of Secure Enterprise Support and should it



errantly occur that any such delivery will be rejected by the Licensee. Licensee agrees that if Secure Enterprise Support becomes temporarily unavailable electronically, such support deliverable is extended until electronic delivery is available or until SAP GSS and Licensee contractually agree on another form of delivery.

## 7. Termination.

7.1 Secure Enterprise Support may be terminated by either party with three (3) months written notice (i) prior to the end of the Initial Term and (ii) thereafter, prior to the start of the following renewal period. Any termination provided in accordance with above will be effective at the end of the then-current Secure Enterprise Support period during which the termination notice is received by the respective party. Notwithstanding the forgoing, SAP GSS may terminate Secure Enterprise Support after one (1) month written notice of Licensee's failure to pay Secure Enterprise Support Fees.

7.2 For the avoidance of any doubt, termination of Secure Enterprise Support or selection to enroll in another type of SAP Support Services by Licensee pursuant to Support Services selection provisions under the Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of Secure Enterprise Support or partial selection of Secure Enterprise Support by Licensee shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents or this Addendum.

8. Verification. To check the compliance with the terms of this Addendum, SAP GSS shall be entitled to periodically monitor (at least once annually and in accordance with SAP standard procedures) (i) the correctness of the information Licensee provided and (ii) Licensee's usage of the Solution Manager Enterprise Edition in accordance with the rights and restrictions set out in Section 2.4.

9. Reinstatement. In the event Licensee elects not to commence Secure Enterprise Support upon the first day of the month following initial delivery of the Software, or Secure Enterprise Support is otherwise terminated pursuant to Section 7 above or declined by Licensee for some period of time, and is subsequently requested or reinstated, SAP GSS will invoice Licensee the accrued Secure Enterprise Support Fees associated with such time period plus a reinstatement fee.

## 10. Other Terms and Conditions.

1.1 The scope of Secure Enterprise support offered by SAP GSS may be changed annually by SAP at any time upon three months prior written notice.

1.2 Licensee hereby confirms that Licensee has obtained all licenses for the Licensee Solutions.

1.3 In the event that Licensee is entitled to receive one or more services per calendar year, (i) Licensee shall not be entitled to receive such services in the first calendar year if the Effective Date of this Addendum is after September 30 and (ii) Licensee shall not be entitled to transfer a service to the next year if Licensee has not utilized such service.

1.4 FAILURE TO UTILIZE SECURE ENTERPRISE SUPPORT PROVIDED BY SAP GSS MAY PREVENT SAP GSS FROM BEING ABLE TO IDENTIFY AND ASSIST IN THE CORRECTION OF POTENTIAL PROBLEMS WHICH, IN TURN, COULD RESULT IN UNSATISFACTORY SOFTWARE PERFORMANCE FOR WHICH SAP GSS CANNOT BE HELD RESPONSIBLE.

1.5 In the event SAP licenses third party software to Licensee under the Agreement, SAP GSS shall provide Secure Enterprise Support on such third party software to the degree the applicable third party makes such support available to SAP GSS. Licensee may be required to upgrade to more recent versions of its operating systems and databases to receive Secure Enterprise Support for such third party software. If the respective vendor offers an extension of support for its product, SAP GSS may offer such extension of support under a separate written agreement for an additional fee.

1.6 Secure Enterprise Support is provided according to the current maintenance phases of SAP Software releases as stated in <http://service.sap.com/releasestrategy>.

1.7 SAP GSS shall provide Secure Enterprise Support to Licensee under the terms of the Agreement (as applicable to the provisioning of services), including, but not limited to, the sections addressing the following issues: limitation of liability, proprietary or confidential information and rights in intellectual



property. However, the parties agree that, other than as to damages resulting from the unauthorized use or disclosure of proprietary information, the amount of damages hereunder shall be limited to the fees paid under this Addendum. Such terms shall prevail over any conflicting or inconsistent terms and conditions, and any additional terms shall be deemed void, that may appear on any purchase order or other document furnished by Licensee to SAP GSS.

1.8 Licensee is responsible for making the necessary internal arrangements for the carrying out of the services hereunder, and in the case of on-site services, if any, for providing an appropriate work environment such as office space, parking, network connectivity, and access to appropriate systems, personnel, printers, fax machines, photocopiers, projectors, and other important facilities. Licensee agrees that the services shall be subject to change if the necessary resources are not provided.

1.9 Those provisions of the Agreement addressing limitation of liability, proprietary or confidential information and rights in intellectual property shall survive any termination of this Addendum, as to the services provided hereunder.

1.10 SAP GSS shall have the sole and exclusive right, title and ownership to any and all ideas, concepts, or other intellectual property rights related in any way to the techniques, knowledge or processes of the Secure Enterprise Support services, whether or not developed for Licensee.

1.11 SAP GSS warrants that Secure Enterprise Support services shall be performed consistent with generally accepted industry standards. SAP GSS MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN CONNECTION WITH THIS ADDENDUM AND THE SERVICES PROVIDED HEREUNDER. For any breach of this warranty, Licensee's sole and exclusive remedy shall be reperformance of the unsatisfactory services.

1.12 This Addendum constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter. No modifications, amendments, or supplements to this Addendum shall be effective for any purpose unless in writing and signed by the parties. Any purchase order or other funding document issued by Licensee is for Licensee's administrative convenience only, and in the event of any conflict between the provisions of this Addendum and any purchase order, the provisions of this Addendum shall prevail and govern and any additional terms in the purchase order or other document shall be inapplicable.

IN WITNESS WHEREOF, the parties have so agreed.

Accepted By: SAP Government Support and Services, Inc. (SAP GSS)	Accepted By: State of Michigan (Licensee)
_____	_____
Authorized Signature	Authorized Signature
_____	_____
Print Name and Title	Print Name and Title
_____	_____
Date	Date



Attachment 2: Support Selection and Assignment Amendment  
("Amendment")

between  
SAP Public Services, Inc. ("SAP PS")  
and  
State of Michigan ("Licensee")  
and  
SAP Government Support and Services, Inc. ("SAP GSS")

REFERENCES:

1. CONTRACT 017B1300170, ATTACHMENT 2, SOFTWARE LICENSE AGREEMENT ("Software License Agreement")
2. SAP SECURE ENTERPRISE SUPPORT ADDENDUM ("SES Addendum")

PURPOSE:

The purpose of this Support Selection and Assignment Amendment is:

1. To document Licensee's election of Secure Enterprise Support as its SAP support plan; and accordingly,
2. To assign responsibility for delivering SAP support from SAP PS to SAP GSS, the provider of Secure Enterprise Support.

As of June 1, 2013, and as between SAP PS and Licensee, this Support Selection and Assignment Amendment modifies the above-referenced Software License Agreement and all Appendices, purchase orders, order forms, schedules, amendments, and exhibits between SAP PS and Licensee to the Software License Agreement (collectively, "SAP / Software License Agreement");. As between SAP PS and Licensee, in each instance in which the provisions of this Amendment contradict or are inconsistent with the provisions of the SAP / Software License Agreement, the provisions of this Amendment shall prevail and govern and the contradicted or inconsistent provisions shall be deemed amended accordingly.

1. **SAP SUPPORT SELECTION AND ASSIGNMENT:** By virtue of Licensee's election to subscribe to Secure Enterprise Support for the Software licensed by Licensee under the SAP / Software License Agreement, which is not available under the Software License Agreement, the obligation to provide support services to Licensee for the licensed Software is hereby assigned by SAP PS to SAP GSS, and shall be made available to Licensee under separate agreement with SAP GSS as described further below. The Secure Enterprise Support services and fees are set forth in a separate Secure Enterprise Support Addendum executed between Licensee and SAP Government Support and Services, Inc.

The parties hereby agree that, commencing on the effective date set forth in Section 2 below, the Support Services for the Software licensed by Licensee shall no longer be provided under the SAP Software License Agreement, and shall instead be provided pursuant to the separate Secure Enterprise Support Addendum executed between Licensee and SAP Government Support and Services, Inc.

Commencing on the effective date set forth in Section 2 below: (i) SAP PS shall have no further obligations to offer or provide support services to Licensee under the SAP / Software License Agreement; (ii) as between SAP PS and Licensee, all support terms set forth in the SAP / Software License Agreement shall be considered terminated in their entirety; and (iii) Licensee is responsible for payment in full to SAP PS of all invoices that have been or will be issued for SAP support provided under the SAP / Software License Agreement for the period of performance up through the last day of the month during which this Amendment is effective. Except for any pre-paid support fees paid by Licensee under the SAP / Software License Agreement for a period of performance after the effective date set forth in Section 2 of this Amendment, there shall be no credits or refunds of any kind to Licensee as a result of its election to subscribe to Secure Enterprise Support.



Licensee represents and warrants that it is not in default of any payment obligations to SAP PS under this or any other agreement, including without limitation the respective software license fees and maintenance/support fees due and owing under the SAP / Software License Agreement. SAP PS and SAP GSS are relying on such representation as a condition precedent to entering into this Amendment. If Licensee is in payment default under this or any other agreement between Licensee and SAP PS as of the effective date set forth in Section 2 of this Amendment, this Amendment shall be null and void, and Licensee shall be obligated under the SAP / Software License Agreement and the terms and conditions as if this Amendment had never been executed.

- 2. **EFFECTIVE DATE OF SELECTION:** The effective date of the Support offering selection and assignment set forth herein shall be June 1, 2013.
- 3. **VALIDITY:** The validity of this Amendment is contingent upon Licensee executing both this Amendment and the Secure Enterprise Support Addendum between License and SAP Government Support and Services, Inc., no later than May 31, 2013.

EXCEPT AS HEREIN PROVIDED, NONE OF THE PROVISIONS OF THE SAP / SOFTWARE LICENSEE AGREEMENT SHALL BE AFFECTED BY THIS AMENDMENT.

Accepted by:

SAP Public Services, Inc.  
("SAP PS")

Accepted by:

State of Michigan, Department of Treasury  
("Licensee")

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted by:

SAP Government Support and Services, Inc.  
("SAP GSS")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Attachment 3: Software Maintenance and Support cost for existing licenses

Software Maintenance and Support cost	Unit Cost for Application Professional User  For existing 673 Professional Users	Unit Cost for Application Developer User  For existing 30 Developer Users	Unit Cost for a Business Partner License  For existing 850,000 Business Partners	SAP Productivity Pak by RWD  For existing 312 Learning Users	Productivity Pak by Help Launchpad by RWD  For existing 312 Learning Users	XI Base Engine  For existing 50,000 gigabytes per month	Siebel Adapter by iWay  For existing 1 adapter	Interactive forms Based on Adobe		
								For existing 2,000 internal Users	For existing Unlimited External Users	For existing 30 Interactive Form Templates
First Year	\$264,400	included	included	\$6,276**	included	included	included	included	included	included
Second Year	\$264,400	included	included	\$7,566**	included	included	included	included	included	included
Third Year	\$264,400	included	included	\$7,566**	included	included	included	included	included	included
Fourth Year	\$264,400	included	included	\$7,566**	included	included	included	included	included	included
Fifth Year	\$264,400	included	included	\$7,566**	included	included	included	included	included	included
Total Software Maintenance and Support Recurring Costs – without option years	\$1,322,000	included	included	\$36,540	included	included	included	included	included	included
Option year 1	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 2	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 3	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 4	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 5	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 6	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 7	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 8	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 9	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 10	TBA*	TBA*	TBA*	TBA**	TBA**	TBA*	TBA*	TBA*	TBA*	TBA*

TBA\* Maintenance fees for non-RWD SAP software are fixed until 12/31/2016. Maintenance fees beyond 12/31/2016 will require a re-quote and SAP Senior Management Approval, and will not exceed then-current GSA pricing.

TBA\*\* Maintenance fees for existing RWD software are \$5,846 on an annual basis through 9/30/2011 and then \$7,566 annually thereafter through 12/31/2016. Maintenance fees beyond 12/31/2016 will require a re-quote and SAP Senior Management Approval, and will not exceed then-current GSA pricing.



Table 3: Software Maintenance and Support cost for Additional Software Licenses\*

Software Maintenance and Support cost	Unit Cost for Application Professional User  Unit = 1 User	Unit Cost for Application Developer User  Unit = 1 User	Unit Cost for a Business Partner License  Unit = Blocks of 50,000 Business Partners	SAP Productivity Pak by RWD  Unit = 1 Learning User	SAP Productivity Pak by Help Launchpad by RWD  Unit = 1 Help Learning User	XI Base Engine (up to 50,000 gigabytes per month)  Unit = 1 CPU	Siebel Adapter by iWay (for additional adapter)  Unit = 1 connected system	Interactive forms Based on Adobe		
								Up to 2,000 additional internal users  Unit = 2000 Interactive Forms Users	Unlimited External Users	30 additional Interactive Form Templates  Unit = 2000 Interactive Forms Users
First Year						\$2,376.00	\$990.00	\$4,972.00	N/A	\$5,280.00
1 - 50 Users	\$422.40	\$792.00		\$14.85	\$1.65					
50 - 100 Users	\$264.00	\$495.00		\$10.40	\$1.16					
100+ Users	\$105.60	\$198.00		\$6.61	\$0.69					
1 - 50 Blocks			\$16,500							
50 -100 Blocks			\$11,550							
100 - 135			\$2,640							
135Blocks** (6,750,000 Bus Partners**)			\$2,393							
Second Year	As above	As above	As above	As above	As above	As above	As above	As above	As above	As above
Third Year	As above	As above	As above	As above	As above	As above	As above	As above	As above	As above
Fourth Year	As above	As above	As above	As above	As above	As above	As above	As above	As above	As above
Fifth Year	As above	As above	As above	As above	As above	As above	As above	As above	As above	As above
Total Software Maintenance and Support Recurring Costs – without option years										
Option year 1	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 2	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 3	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 4	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 5	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 6	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 7	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 8	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 9	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*
Option year 10	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*	TBA*

TBA\* Maintenance fees are fixed until 12/31/2016 and are based upon licenses acquired by 03/18/2011. Thereafter annual maintenance will be 22% of the license fee per product though 12/31/2016. Maintenance fees beyond 12/31/2016 will require a re-quote and SAP Senior Management Approval, and will not exceed then-current GSA pricing.

135 Blocks\*\* This price per unit is valid only if the full quantity of 135 Blocks of 50,000 Business Partners is licensed by 12/24/2010.



Table 5: Software Maintenance and Support cost for Additional Optional Software Licenses\*

Optional Software License Annual Maintenance	Units	Years 1-5 if acquired by 03/18/2011, Each Year \$ per Unit	Years 1-5 if acquired after 03/18/2011, Each Year \$ per Unit	Option Years 1 - 10
SAP Application Business Expert Upgrade User	Per existing Professional User	\$59	TBA*	TBA*
SAP Application Business Expert User	Per New Business Expert User	\$165	TBA*	TBA*
SAP BusinessObjects Business Intelligence (BI) package	Per Business Expert User	\$41	TBA*	TBA*
SAP BusinessObjects Operational Enterprise Information Management Package	Per 4 CPUs	\$9,240	TBA*	TBA*
SAP BusinessObjects Enterprise Premium	Per 1 CPU	TBA*	TBA*	TBA*
SAP Crystal Reports 2008	Per User	TBA*	TBA*	TBA*
SAP BusinessObjects Xcelsius Enterprise	Per User	TBA*	TBA*	TBA*
SAP BusinessObjects Xcelsius Interactive Viewing	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Web Intelligence	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Explorer	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Mobile	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Metadata Management	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Data Federator	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Data Quality Management Premium	Per 4 CPUs	TBA*	TBA*	TBA*
SAP BusinessObjects Data Integrator Premium	Per 1 CPU	TBA*	TBA*	TBA*
SAP BusinessObjects Data Services	Per 4 CPUs	TBA*	TBA*	TBA*
SAP BusinessObjects Knowledge Accelerator Bundle for BI Package	Per Business Expert User	\$8	TBA*	TBA*
SAP BusinessObjects Access Control	Per 500 employees	\$1,815	TBA*	TBA*
SAP BusinessObjects Process Control	Per 500 employees	\$2,063	TBA*	TBA*
SAP Central Process Scheduling by Redwood	Per Process Server	\$1,980	TBA*	TBA*
SAP LoadRunner by HP, Controller	Per Controller	\$3,300	TBA*	TBA*
SAP LoadRunner by HP, 250 Virtual Users Bundle	Per bundle of 1000 Virtual Users	\$14,850	TBA*	TBA*
SAP Quality Center by HP, Enterprise Edition, Bundle	Per Tester	\$1,881	TBA*	TBA*
SAP Test Acceleration and Optimization	Per Tester	\$396	TBA*	TBA*
SAP Solution Manager Adapter for SAP Quality Center by HP	Per Connected System	\$1,650	TBA*	TBA*

BA\* Maintenance fees are fixed until 12/31/2016. Maintenance fees beyond 12/31/2016 will require a re-quote and SAP Senior Management Approval, and will not exceed then-current GSA pricing.



#### Notes for Table 4: Additional Optional Software

SAP Application Business Expert Upgrade User is a Named User authorized to perform all roles supported by SAP BusinessObjects Products (SBOP) - excluding modifying SBOP - provided such Named User is also an individual licensed from SAP as an SAP Application Professional User and both such Users are licensed for the same runtime database, if any. If receiving support under the license agreement, Licensee must be subscribed to and fully paid on support for both this User and the underlying SAP Application Professional User for so long as Licensee continues to receive support under the license agreement.

SAP Application Business Expert User is a Named User authorized to perform all roles supported by SBOP (excluding modifying SBOP) and also includes the rights granted under the SAP Application Professional User.

SAP BusinessObjects Business Intelligence (BI) Package is the grouping of business analytic inquiry and reporting applications that includes:

- BusinessObjects Enterprise Premium
- Web Intelligence
- Crystal Reports
- Xcelsius (Dashboards)
- Metadata Management
- Data Federator
- Integration Kits (including Siebel)
- Explorer
- Voyager
- Mobile

SAP BusinessObjects Operational Enterprise Information Management Package is the grouping of business analytic data repository creation and maintenance applications that includes:

- Data Integrator
- Data Quality Management
- Data Cleansing

SAP BusinessObjects Access Controls is the SAP solution to manage and enable end-to-end compliance concerning access to SAP, and non-SAP, applications. Key functionality includes:

- Role definition and management
- Super user access control
- Compliant provisioning
- Risk analysis, detection, and remediation solution for access and authorization controls
- Embed cross-enterprise preventive compliance in business process
- Reduce cost of user administration
- Improve productivity of end users
- Provide auditable tracking for auditors

SAP BusinessObjects Process Controls is the SAP solution that focuses on the effectiveness of the business operations by enforcing State policies and procedures governing the execution of transactions pertaining to System configuration, Master data changes, and Transactional data creation. Process Controls assures auditors that process integrity controls are embedded in the process and provides for the monitoring of system activity from multiple views based on organizational needs. Process controls provides for one repository for control documentation, testing, and improvements for all controls, both automated and manual and one system of record for process control management activities.

SAP Central Process Scheduling by Redwood (CPS) provides automated Job Scheduling for automation of background processes such as 'Batch' jobs, FTP, O/S commands, ABAPs, etc, and coordination of events and processes across applications, servers and environments. CPS provides event-driven execution that enables management of workload based on real-time business events across all environments as well as dynamic workload balancing for the automatic, real-time load balancing across multiple process servers in all application environments.. CPS provides for a centralized point of control for administration and operation of a Cronacle environment with automated error recovery procedures dependent on different job completion codes and conditions.

SAP LoadRunner by HP is an important tool to assist in determining if an application / system will meet the needs of the business before going live by:

- identifying and eliminating performance bottlenecks during the development lifecycle



- improving performance and scalability of business processes that depend on SAP and non-SAP software
- reducing slowdowns, and the associated costs, in development schedules
- increase efficiency by rigorously testing all applications before going live
- enable organizations to adapt quickly to changing business processes
- reduce risk of system failures at times of peak demand
- enhance planning and delivering the newest classes of service-driven business processes

SAP Quality Center by HP allows you to speed up testing and improve software quality, transferring business blueprints and test assets from the SAP Solution Manager application management solution to the SAP Quality Center application by HP. You can then test in SAP Quality Center, display the results in SAP Solution Manager, and synchronize your quality center defects with service desk tickets.

SAP Test Acceleration and Optimization provides the tools to enable the automation of business process tests by automatically generating test components for SAP GUI-based transactions.

SAP Solution Manager Adapter for SAP Quality Center by HP integrates the SAP Solution Manager application management solution and SAP Quality Center – providing for the transfer of test assets and faster, more transparent test execution

SAP Solution Manager speeds test preparation and execution while providing a single point of access to the entire software landscape. Through its business process change analyzer, SAP Solution Manager integrates with SAP Test Acceleration and Optimization and identifies test scripts that should be updated based on changes to your software landscape. SAP has also developed an adapter that integrates SAP Solution Manager with SAP Quality Center, providing requirement traceability for a closed-loop process.

#### Metrics definitions

SAP Learning User is a Named User who is authorized to access solely the learning solutions on SAP's price list, provided that those learning solutions are licensed. A SAP Learning User is not entitled to access other SAP solutions or solution components. The applicable learning solutions offered by SAP.

Process servers are defined as each server (real or virtual) where scheduled jobs are to be managed. In addition a separate process server is required for every SAP system that is to be managed.

Virtual User: A virtual user is defined as each user that is simulated in the software to test the load on the SAP system.

Loadrunner Controller. A Loadrunner Controller is defined as the central point for load test design and load test execution.

Testers are defined as employees working with SAP Quality Center by HP products. For use with SAP Test Acceleration and Optimization tester are defined as employees using SAP TAO and testing SAP applications enterprise-wide.

Connected System is defined as the total number of productive SAP Solution Manager systems connected to the productive systems of SAP Quality Center by HP, Central Process Scheduling by Redwood, or SAP Productivity Pak by RWD.

CPU. Every CPU that runs at least parts of the licensed software is considered in its entirety. When counting physical CPUs, each core of a physical CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. When counting virtual CPUs, each core of a virtual CPU that runs at least parts of the licensed software, including those that are temporarily assigned or scheduled to cover peak processing, is considered and counted. If the software will run in a pure virtual environment, physical CPUs will not be considered. CPU metric value calculation: For each CPU, the first processor core shall be multiplied by 1, and each incremental processor core is multiplied by 0.5. The sum for all CPUs shall then be rounded up to the next whole number.

Employee is defined as the total number of employees (including contract workers) employed by the company or employed by the legal entity that is licensing the functionality of the package.

**Attachment 4: Contractor Compliance with IRS 1075 Exhibit 7 and State Data Restrictions**

1. All work will be done under the supervision of the contractor or the contractor's employees.
2. Regarding return and return information in any format being used only for the purpose of carrying out the provisions of this contract, Contract Section 2.9 provides the following: The parties acknowledge that neither the SAP Enterprise Support nor Secure Support described herein contemplates the processing or storage of Licensee data, Licensee Proprietary Information, or Licensee customer information by SAP and SAP GSS, and that Licensee provides access to such information or data, if at all, solely to the extent necessary for SAP and SAP GSS to perform its obligations under this Addendum. " SAP GSS staff will not access accounts identified as containing Federal Tax Information., (FTI).
3. Regarding returns and return information being accounted for and properly stored see section 2.9 above. SAP does not contemplate the storage or processing of Licensee data. SAP will not store or process any data identified as containing Federal Tax Information (FTI).
4. Regarding the contractor's certification that the data processed during the performance of this contract being completely purged, see section 2.9 above. SAP does not contemplate the storage or processing of Licensee data. Further, SAP will not store or process any data identified as containing Federal Tax Information (FTI).
5. Regarding any spoilage or any intermediate hard copy printouts that may result during processing, tax return information identified in the Licensee's system as containing Federal Tax Information; (FTI) will not be included in any reports, spoilage or hard copy printouts. Further, based on section 2.9 above, SAP does not contemplate the storage or processing of Licensee data.
6. Regarding all computer systems, equipment, and resources receiving processing, storing, or transmitting Federal tax information, see section 2.9 above. SAP does not contemplate the storage or processing of Licensee data and will not be storing or processing any data identified as containing Federal Tax Return Information (FTI). Further, as stated in 2.9.2.1 Clearances and Representations. SAP GSS represents that: (i) it is a subsidiary company of SAP AG and operates under a Proxy Agreement administered by the US Defense Security Service to mitigate foreign ownership, control, and influence; (ii) it has successfully completed security inspection process requirements of, and currently holds a Top Secret facility security clearance granted by, the US Department of Defense (DoD); and (iii) the SAP GSS employees assigned with responsibility for delivering Secure Support to Licensee hereunder have successfully completed the security clearance process requirements of, and currently hold Secret or Top Secret security clearances granted by, the DoD. During the term of this Addendum upon Licensee's written request the SAP GSS Facility Security Officer (FSO) shall verify such clearance(s) in writing to Licensee and promptly notify Licensee of any downgrade in status. Further, SAP will not store or process any data identified as containing Federal Tax Information (FTI). In addition, the Internal Revenue Service has reviewed SAP GSS Terms and the Addendum and deemed these to be adequate and compliant with IRS requirements.

SAP shall provide the Department of Treasury with a copy of the IRS acceptance letter indicating that the terms and addendum is adequate and complinat.

7. Regarding, no work involving Federal tax information furnished under this contract will be subcontracted without prior written approval; all work will be performed by SAP GSS which represents that: (i) it is a subsidiary company of SAP AG. No work will be subcontracted out without written authorization of the Licensee.
8. Regarding, the contractor will maintain a list of employees authorized access, SAP GSS staff will not access accounts identified as containing Federal Tax Information., (FTI). To confirm this Michigan Department of Treasury will conduct Browsing reviews and generate Browsing reports following any SAP access to the Licensee's system to confirm that data containing Federal Tax Information (FTI) has not been accessed.

