Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

NOTICE
OF
CONTRACT NO. 071B4300017
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Measured Progress, Inc.	Dona Carling	carling.dona@measuredprogress.org
100 Education Way	TELEPHONE	CONTRACTOR #, MAIL CODE
Dover, NH 03820	(603) 749-9102	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDE	Douglas Collier	517-241-4431	Collierd1@michigan.gov
BUYER:	DTMB	Angela Buren	517-284-7005	burena@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Standard Setting Assessment Services – Michigan Department of Education			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
2 yrs. 6 months	March 1, 2014	August 31, 2016	Four-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
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☐ YES ☒ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$1,875,907.00		

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N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		$1,875,907.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #071I3200017. Orders for delivery may be issued directly by the Department of Education through the issuance of a Purchase Order Form.

Notice of Contract #: 071B4200017

FOR THE CONTRACTOR:	FOR THE STATE:
Measured Progress, Inc.	
Firm Name	Signature
	Kevin Dunn, Director, Services Division
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

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ATTACHMENTS:

Attachment A – Pricing Structure

DEFINITIONS—DTMB

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 within the scope of this Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven-year period following Contractor's provision of any work under this Contract.

Bidder(s) are those companies that submit a proposal in response to the RFP.

Blanket Purchase Order is an alternate term for Contract and is used in MDE's computer system.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00 a.m. Eastern through 5:00 p.m. Eastern unless otherwise stated.

CCI means Contract Compliance Inspector.

Day means calendar day unless otherwise specified.

Reserved means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology, Management and Budget.

Environmentally Preferable Products means 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 which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxins either disposed of or consumed.

Hazardous Material means 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 this Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in Section 1.031: Contractor Staff, Roles, and Responsibilities as Key Personnel.

New Work means any Services/Deliverables outside the scope of this Contract and not specifically provided for under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means 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, hydrochlorofluorocarbons.

Post-Consumer Waste means 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 means industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

Contract means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means 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 means any physical location where the State performs work. State Location may include State-owned, leased, or rented space.

SubContractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means 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 means 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 and in furtherance of performing the services required by this Contract.

DEFINITIONS—Division of Accountability Services (DAS)

Accommodation — Accommodations are practices and procedures in the areas of presentation, response, setting, and timing/scheduling that provide equitable access during instruction and assessment for students with disabilities. Educators and administrators design accommodations in order to compensate for or mitigate a disability the student may have, or to address a physical, mental, or emotional need a student exhibits. Accommodations administered both in regular instruction and during assessments is one way that educators ensure that students have access to education in a way that is equal to their peers. Accommodations are intended to reduce or eliminate the effects of a student's disability; they do not reduce the learning experience.

ACT® (American Collegiate Test) — A curriculum- and standards-based educational and career planning tool that assesses students' academic readiness for college.

Activity-based observation item — In Michigan, this is a type of MI-Access Supported Independence or Participation performance-based item (SI/P) that takes into account the degree of assistance provided by the test administrator(s) to a student in completing an individual or group activity. The single digit response rating is A, B, C, or 1, 2, 3.

ADA (Americans with Disabilities Act) — Wide-ranging legislation intended to make American society more accessible to people with disabilities. It extends protection against discrimination to all State and local government services (including public schools) whether or not they receive Federal funds.

Adaptive Test Engine* — This is the adaptive algorithm component of the CAT online assessment system. The adaptive algorithm is adjustable by assessment program and test (this includes grade level, content area, test form—such as accommodated forms—and time of testing).

The test specifications in the *Item Bank System (IBS)* contain the metadata that define the item criteria for the test bank and the algorithm (or engine) to use. The test delivery engine is expected to contain and use the correct algorithm (or engine) for test delivery when the test is being administered.

The Online Administration Contractor is expected to work closely with other vendors and the DAS to ensure that, after successful user acceptance testing (UAT) with simulated student and item data is completed, the Adaptive Test Engine functions correctly with actual test data from students.

Since the purpose of the UAT for the Adaptive Test Engine is to evaluate the quality of tests before they are administered, the UAT produces output used by psychometricians to analyze test reliability, fidelity to test blueprint and test design, test item bank quality and characteristics, algorithm functioning and item exposure.

The adaptive algorithm will be replicable; i.e., in high stakes situations, the MDE will be able to identify how the adaptive algorithm determined which item to provide a student based on responses to previous test items.

AERA (**American Educational Research Association)** — The national interdisciplinary research association for scholars who undertake research in education.

Alternate Achievement Standards — Explicit definitions of how students are expected to demonstrate attainment of the knowledge and skills covered in the State's extended content standards.

Alternate Assessment — An assessment used to measure the learning progress and performance of students with disabilities whose IEP Teams have determined that it is not appropriate for them to participate in general education assessments (i.e., the MEAP or the MME). As allowed by Federal law, these assessments may be based either on grade-level achievement standards or alternate achievement standards.

Answer Booklet — A scannable multi-page document in which students record their responses to an assessment.

Answer Document — A scannable answer sheet that students use to record their responses to an assessment.

AI (Artificial Intelligence) Scoring — Computer-automated scoring of constructed-response items.

AIF (Assessment Interoperability Framework) – The framework being developed by the joint SIF/IMS working group to define how interoperability standards should be applied for an assessment platform in support of State Content Standards and assessments.

APA (American Psychological Association) — The largest scientific and professional organization representing psychology in the United States.

API (Application Programming Interface) — A specification intended to be used as an interface by software components to communicate with each other.

APIP (Accessible Portable Item Protocol) Standard — A technical standard that focuses on accessibility in assessment items. APIP is an extension of the QTIv2.1 standard, allowing accessibility information to be included in a digital test item definition so that items can be transferred between APIP compliant item banks.

Assessment — A tool or instrument that measures what a student knows and can do. This measurement is often expressed as a score on a numerical rating scale, as well as a description of a performance level.

Assessment Accommodation — Changes the way a student accesses an assessment without changing the actual standards the student is working toward or the content being assessed. The goal of an assessment accommodation is to minimize the impact of a student's disability on his or her performance on an assessment. Decisions regarding assessment accommodations are to be made on a case-by-case basis and are to be based on relative appropriateness to a disability and the impact it has on the student. Decisions about assessment accommodations should be made well in advance of the actual assessment.

Assessment Coordinator — School or District Coordinator for MDE assessment programs. Currently, there are MEAP, MEAP-Access, MI-Access, and MME coordinators for general and alternate assessment programs. MME also has an Accommodations Coordinator for the Day 1: ACT®; Day 2: WorkKeys®; and Day 3: Michigan's custom developed components. Multiple assessment programs may be coordinated by a single person.

Assessment Window — The span of days over which assessments are administered.

AYP (Adequate Yearly Progress) — The measure used to hold schools and districts accountable for student achievement in reading and mathematics. AYP is based on State assessments, including the English Language Proficiency Assessment (ELPA), the Michigan Educational Assessment Program (MEAP), the Michigan Merit Examination (MME), MEAP-Access, and MI-Access. It includes measurement of proficiency (as measured by State assessment), participation rates in State assessment, and attendance or graduation rates. Schools can meet AYP proficiency targets in two different ways: (1) by meeting the objective for the grade or subject area, or (2) by showing sufficient improvement (otherwise known as "Safe Harbor"). For a public school or school district to make AYP, (1) the school as a whole and each measurable student subgroup will meet or exceed the State annual measurable objectives and have at least a 95% participation rate in the Statewide assessments, and (2) the school will meet the State's requirement for other academic indicators. For more information on AYP, visit **https://MDE.State.mi.us/ayp/**.

Benchmarks — While content standards describe what all students should know and be able to do in certain broad subject areas, benchmarks indicate what students should know and be able to do at various developmental levels (i.e., early elementary, later elementary, middle, and high school) within the content standards (Michigan Curriculum Framework, page 8).

CEDS (Common Education Data Standards) – A national collaborative effort to develop voluntary, common data standards for a key set of education data elements to streamline the exchange and comparison of data across institutions and sectors. (https://ceds.ed.gov)

CEPI (Center for Educational Performance Information) — Collects and reports data about Michigan's K–12 public schools. Initiatives in data collection and reporting facilitate school districts' compliance with the Federal *No Child Left Behind Act of 2001* and the Michigan Department of Education's accreditation plan, *EducationYes!*

CAT (Computer Adaptive Test)* — A computer adaptive test is one in which the next test question is selected (and typically administered) by a computer algorithm based on the student's performance on previously administered items. In such a way, an assessment can be tailored to the individual student's response, thereby adding precision to the resulting scores since students only see the test questions most appropriate for them.

CCR (Change Control Request) —In Michigan, the process to alter the Specifications or the Statement of Work.

(State Content Standards) — English language arts and mathematics standards for grades K–12

Concurrent Users — Users who are logged in and using the Online Test Delivery System at any given time.

Content Area — Course or discipline of study, including reading, mathematics, science, social studies, and writing. (Content areas can also include languages, art, music, theater arts, and other disciplines not typically assessed on Statewide assessments.)

Core GLCE — A Grade Level Content Expectation, or GLCE, that measures an essential skill/content area.

Cut Score — A specific point on a score scale, such that scores at or above that point are interpreted or acted upon differently from the scores below that point (Standards for Educational and Psychological Testing, 1999).

DAS (Division of Accountability Services)— Formerly known as the **Bureau of Assessment and Accountability**, the DAS currently consists of four offices: Office of Standards and Assessment (OSA), Office of Systems, Psychometrics, and Measurement Research (OSPMR), Office of Accountability Business Operations (OABO) and Office of Professional Preparation Services (OPPS).

DAS Data Mart — A database used by DAS to collect and store assessment data at the student, school, district, ISD and State levels.

DAS Secure Site — This is the entry point, or ***Portal*,*** where end-users access all components (paper-and-pencil and online) of Michigan's assessment and reporting systems. The Secure Site has a multi-tier security structure that controls user rights based on pre-established permissions. It is used for pre-identifying students for online and/or paper-and-pencil assessments by assessment program, grade level, and content area; for ordering materials and tracking order status; for displaying which students have tested; and for identifying possible administration issues.

Digital Test Item — An electronic item format allowing items to be transported using a standardized exchange file format or standard, such as QTI or APIP.

Disability — The Individuals with Disabilities Education Act (IDEA) has defined a disability as "mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities."

EDT — Eastern Daylight Time.

Economically Disadvantaged — A student from a family with an annual income below a level that is based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index. These students are eligible for free and reduced-price meals.

EEM (Educational Entity Master) — This is the single repository for all statewide school and district information. It is managed by Center for Educational Performance Information (CEPI), which is part of the Department of Technology Management and Budget. EEM data required for assessments (school, district, Intermediate School District) are transferred to the DAS Secure Site. Contractor access to these data will be provided via web services or direct table read from the DAS Secure Site database.

ELA — English Language Arts, subjects or content areas that include reading, writing, listening, and speaking in the State Content Standards. ELA aims at developing the student's comprehension and capacity for use of written and oral language.

Electronic Document Management Site (*Master data repository site)** — The electronic repository of materials, processes, data, and services for this Contract. It serves multiple offices, departments, and Contractors and contains such items as schedules, requirements, and print-optimized forms of print-ready materials for Michigan's assessment and reporting systems.

ELL English Language Learner (also referred to as English learner) — The Michigan definition is a student who has a primary or home language other than English who—because of limited proficiency in speaking, reading, writing, and understanding the English language—requires alternative programs or services to equally access the local educational agency's total academic curriculum. These students are sometimes referred to as students with limited English proficiency (LEP).

ESEA — Elementary and Secondary Education Act.

EST — Eastern Standard Time.

EGLCEs (Extended Grade Level Content Expectations) — GLCEs indicate what elementary and middle school students should know and be able to do in specific grades within the content standards. Extended GLCEs are those that have been "extended" (or reduced in depth, breadth, and complexity) to more appropriately reflect what the student population taking an alternate assessment based on alternate achievement standards should know and be able to do given their cognitive functioning level, curriculum, and instruction.

EHSCEs (Extended High School Content Expectations) — HSCEs indicate what high school students should know and be able to do in high school within the content standards. Extended HSCEs are those that have been "extended" (or reduced in depth, breadth, and complexity) to more appropriately reflect what the student population taking an alternate assessment based on alternate achievement standards should know and be able to do given their cognitive functioning level, curriculum, and instruction.

Extended response — Constructed-response items that require AI and/or handscoring to determine a student's performance on an assessment task or essay item.

Field Test — A test administration used to check the adequacy of testing procedures, generally including test administration, test responding, test scoring, and item test reporting. A field test is more extensive than a pilot test.

Field-test Item — A test question (often embedded within the operational items) that is inserted to obtain statistical information about its performance and ability to measure its intended content; this item does not count toward the student score; the statistical data are used in item selection for future tests.

Formative Assessment — The formative assessment process used by teachers and students during instruction to provide feedback in order to adjust ongoing teaching and learning and improve students' achievement of intended instructional outcomes.

GLCE (Grade Level Content Expectation) — What elementary and middle school students should know and be able to do in specific grades within a content standard.

HSCE (High School Content Expectation) — What high school students should know and be able to do within a content standard.

Homeless — A homeless student is one who lacks a fixed, regular, and adequate nighttime residence. This includes students who live in shelters, abandoned buildings, cars, and public spaces, as well as students whose families share housing with other families because of economic hardship or who live in motels, hotels, trailer parks, or campgrounds.

Home-schooled — Students who are receiving instruction at home and take the State assessment in their local school district. Public school districts are required to administer State-level assessments to home-schooled students who wish to be assessed.

IDEA 1997 — The Federal Individuals with Disabilities Education Act, which describes and regulates educational opportunities for individuals with disabilities. It also requires that students with disabilities be included in Statewide assessments. Reauthorized in 2004.

IEP (Individualized Education Program) — A written Statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with the Individuals with Disabilities Education Act regulations.

Interim Assessment — Assessments that provide educators with actionable information about student progress at determined intervals throughout the year.

ISD — Intermediate School District**.**

IT — Information Technology.

IBS (Item Bank System) — The MDE Item Bank System is a State-developed web-based application that encompasses all of the following functions within a single framework: the Complete Item Development Life Cycle, Test Development Processes, and Test Composition Process.

LEP (Limited English Proficient) — The terms “limited English proficient” or “English language learner,” when used with respect to an individual, mean someone who

- is aged 3 through 21;
- is enrolled in or preparing to enroll in an elementary school or secondary school;
- (i) was not born in the United States or whose native language is a language other than English; (ii) (I) is a Native American or Alaska Native, or a native resident of the outlying areas; and (II) comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or (iii) is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual (i) the ability to meet the State’s proficient level of achievement on State assessments described in section 1111(b)(3); (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity to participate fully in society.

MDE (Michigan Department of Education) — Under the direction of the Superintendent of Public Instruction, this agency carries out the policies of the State Board of Education and implements Federal and State legislative initiatives.

MDE DAS (**Division of Accountability Services)** — Formerly known as the MDE Bureau of Assessment and Accountability, the MDE DAS currently consists of five offices: Office of Standards and Assessment (OSA), Office of Evaluation, Strategic Research and Accountability (OESRA), Office of Systems, Psychometrics, and Measurement Research (OSPMR), Office of Professional Preparation Services (OPPS) and Office of Assessment Business Operations (OABO),

MDE Data Mart — A database used by MDE to collect and store assessment data at the student, school, district, ISD and State levels.

MDE Secure Site — This is the entry point, or ***Portal****, where end-users access all components (paper-and-pencil and online) of Michigan’s assessment and reporting systems. The Secure Site has a multi-tier security structure that controls user rights based on pre-established permissions. It is used for pre-identifying students for online and/or paper-and-pencil assessments by assessment program, grade level, and content area; for ordering materials and tracking order status; for displaying which students have tested; and for identifying possible administration issues.

MEAP (Michigan Educational Assessment Program) — One of five components of the Michigan Educational Assessment System, the MEAP is the State’s general education assessment for students in grades 3–9 and is used Statewide to assess student performance in specific content areas. The MEAP’s content is aligned to the Model Content Standards of the Michigan Curriculum Framework.

MEAP-Access — One of the components of the Michigan Educational Assessment System, it is the State’s Alternate Assessment based on Modified Achievement Standards (AA-MAS). It is used to assess students with Individualized Education Programs (IEPs) in grades 3–8 in the content areas of reading, writing, and mathematics. For this contract, MEAP-Access will be processed and reported as accommodated forms of the MEAP. (In Fall 2013, there are two MEAP-Access forms.)

MEAS (Michigan Educational Assessment System) — The State Board of Education-approved assessment system in Michigan, which is comprised of five assessment programs, including the ELPA, MEAP, MME, MEAP-Access and MI-Access.

MEIS (Michigan Education Information System) — A security system implemented and used with various Michigan Department of Education (MDE) and Center for Educational Performance and Information (CEPI) applications.

MI-Access — Michigan's alternate assessment system, which is composed of three assessment programs (Functional Independence, Supported Independence, and Participation) and is based on Alternate Achievement Standards (AA-AAS). As a component of the MEAS, MI-Access is intended for students for whom the MEAP, the MME, or MEAP-Access, either with or without assessment accommodations, are not appropriate as determined by a student's Individualized Education Program (IEP) Team.

MI-Access Functional Independence (FI) Assessments — The MI-Access Accessing Print (reading), Expressing Ideas (writing), mathematics, and science assessments for students who have, or function as if they have, mild cognitive impairment.

MI-Access Participation (P) Assessments — The MI-Access English language arts, mathematics, and science assessments for students who have, or function as if they have, severe cognitive impairment.

MI-Access Supported Independence (SI) Assessments — The MI-Access English language arts, mathematics, and science assessments for students who have, or function as if they have, moderate cognitive impairment.

Michigan Curriculum Framework (MCF) — A resource for helping Michigan's public and private schools design, implement, and assess their core content-area curricula. The MCF includes three components: content standards, benchmarks, and grade level content expectations, which represent rigorous expectations for student performance and describe the knowledge and abilities needed to be successful in today's society.

MMC – Michigan Merit Curriculum.

MME (Michigan Merit Examination) — One of five components of the MEAS. It is the State's general education assessment for students in grade 11 (or eligible students in grade 12) and is used Statewide to assess student performance in specific content areas. The MME's content is designed to measure content standards of the Michigan Merit Curriculum.

Modified Achievement Standards — An expectation of performance that is challenging for eligible students, but may be less difficult than a grade-level achievement standard. Modified achievement standards will be aligned with a State's academic content standards for the grade in which a student is enrolled. Thus, only the achievement standards are modified, not the content standards on which those modified achievement standards are based.
MSDS (Michigan Student Data System) — Data submitted by school districts, including discrete information about individual students, such as age, gender, ethnicity, and program participation. The data collected via the MSDS are used to meet the reporting requirements of the Federal No Child Left Behind Act of 2001, including the determination of Adequate Yearly Progress (AYP).

Multiple Choice — The most common type of selected-response item, consisting of two parts: a stem and various response options.

NCLB (No Child Left Behind Act of 2001) — An act that reauthorizes the Elementary and Secondary Education Act, including Title programs I–IX. It is designed, in part, to (1) increase the accountability of States, districts, and schools; (2) expand choices for parents and students, particularly those attending low-performing schools; (3) provide greater flexibility for States and local educational agencies in the use of Federal dollars; and (4) increase emphasis on reading, especially for young children. In addition, it requires States to implement a single accountability system for all public schools and all students, and increases the number of times students—including those with disabilities and limited English proficiency—will be assessed.

NCME — National Council on Measurement in Education.

Nonstandard Accommodation — Changes the construct being measured by an assessment or assessment item and, thus, results in an invalid test score. This includes any accommodation not deemed "standard" in the Assessment Accommodation Summary Tables approved by the State Board of Education.

OEAA (Office of Educational Assessment and Accountability) — Former name for the Bureau of Assessment and Accountability (DAS) in the Michigan Department of Education that oversees all Statewide educational assessment and accountability programs.

Operational item — A test question with statistical information that is selected for use on a test that measures student perform on content ; this item does count toward the student score; the resulting statistical data are used in item selection for future tests.

OSA (Office of Standards and Assessment) – An office of the Division of Accountability Services under which standards and assessment functions are consolidated.

OSPMR (Office of Systems, Psychometrics, and Measurement Research) — An office of the MDE, DAS under which psychometric, accountability, research, and data management functions are consolidated.

Performance Task — Collections of items and activities that require multiple steps and may include components of other items in the task. These activities are meant to measure capacities such as depth of understanding, writing and research skills, and complex analysis, which cannot be adequately assessed with traditional assessment questions.

Pilot Test — A test administered to a sample of test takers to try out some aspects of the test or test items, such as instructions, time limits, item response format, or item response options.

Pilot Item — A test question that is newly developed (often used in stand-alone testing) that do not count toward a student score.

PNP — Personal Needs Profile.

Pre-ID — Pre-identification of which students in each school will take which assessments with which accommodations.

Proficient — Sometimes expressed by a numerical “cut score” on a Statewide assessment, a student who is proficient in a content area demonstrates knowledge of that content area appropriate to grade-level expectations. Those expectations may vary based on the student’s grade level and instructional setting. See Grade Level Content Expectation (GLCE), High School Content Expectation (HSCE), English Language Learner (ELL) Standards, Extended Grade Level Content Expectations (EGLCEs), Extended High School Content Expectations (EHSCEs), and Extended Benchmarks (EBs).

Progress — Annual gains made by the student, as evidenced by the acquisition of what the student knows and can do or by an increase in assessment scores or performance levels.

QTI (Question and Test Interoperability) — An information model that describes question (item) and test (assessment) data and their corresponding results reports. The QTI specification enables the exchange of this item, test and results data between authoring tools, item banks, test construction tools, learning systems, and assessment delivery systems.

SBE — State Board of Education.

Scoring Rubric — Descriptive scoring schemes that are developed by teachers or other evaluators to guide the analysis of the products or processes of students’ efforts. Scoring rubrics are typically employed when judgment of quality is required and may be used to evaluate a broad range of subjects and activities (Practical Assessment, Research, & Evaluation, 2000).

SDs or SWDs (Students with Disabilities) — A student who is determined by an Individualized Education Program (IEP) Team or a hearing officer to have one or more of the impairments that necessitates special education or related services, or both, who is not more than 25 years of age as of September 1 of the school year of enrollment, who has not completed a normal course of study, and who has not graduated from high school. A student who reaches the age of 26 years after September 1 is a “student with a disability” and entitled to continue a special education program or service until the end of that school year.

Selected Response — In Michigan, this term is used to describe MI-Access Supported Independence and Participation items that take into account the degree of assistance provided by the test administrator(s) to a student in selecting a response to a picture card stimulus. The single digit response rating is A, B, C, or 1, 2, 3.

SF (Spiral Fixed-Form) — Computer-based test containing multiple forms, or versions, of a test booklet where one or more sections vary from one test taker to another.

Short answer – The student types or writes in a word or phrase.

SIS (Student Information System)*** — A software application that is designed for education establishments to manage student data. In Michigan, MSDS system contains student data that are transferred to the MDE Secure Site system for assessment management purposes.

Single Version of the Truth – A technical concept describing the ideal of having either a single centralized database, or at least a distributed synchronized database, which stores all of an organization's data in a consistent and non-redundant form.

Standard Accommodation — An assessment provision given so that the effect of a disability is minimized and the student is provided an opportunity to demonstrate the degree of achievement he or she actually possesses. It does not change the construct being measured; therefore, it yields valid assessment scores.

Summative Assessment — A test that is used to evaluate student competency. A summative assessment is commonly delivered at the end of the school year during a fixed administration window and is commonly aligned with State standards.

Technology Enabled (TN) — Computer-based items that include features, such as reading the item to the test-taker in English or another language, such as Spanish or Arabic.

Technology Enhanced (TE) — Computer-based test items that allow students to reorder text, show evidence and use drop-down menus for responses.

Test Administration* — Management of test windows, proctor assignment, class/group assignment for reporting, and student identification methods are components of the DAS Secure Site. This information is provided to administration Contractors via a direct table read or web services interface.

Test Cycle — Refers to the period of time, usually a range of dates, for administering an assessment. In Michigan, current assessment cycles are either fall or spring, with a specific date range for each. Interim assessments will have pre- and post- test cycles, which are fall and spring for yearlong subjects or courses; September and January or February and May for ½ credit courses.

Test Delivery* **for Online Assessments** — The overall responsibility of this component is to securely deliver the assessment to the student, securely store the student responses, store other information about how the student responded (i.e., time to answer, time to render for the student, etc.), and deliver the test items in the proper accessible format that the student needs. The Test Delivery System will also include two subcomponents:

- Student Workstations: This is a software subcomponent used to interact with the student. It is responsible for delivering the items to the student and gathering the responses and response metadata. It also contains the tools needed by the student to take the test (e.g., calculators, tables, accessibility tooling, etc.).

- Proctor Workstation: This is a software subcomponent the proctor uses to manage the test delivery. It allows the proctor to start and stop, or suspend and resume the test for the testing group or individual students. It also allows the proctor to monitor student progress, as well as helping students when they are having issues.

Test Event – The administration of an online computer-adaptive test.

Test Packager* **for Online Assessments** — In year one of this Contract, the Online Administration Contractor will provide the software to convert DAS IBS test items for use with the online test delivery engine. This software will have the capacity to receive Test Package files via a web service or direct table read interface of the DAS IBS system and, once properly rendered by the Online Administration Contractor, receive the online version of the item from the Test Delivery System for inclusion in the DAS IBS.

Test Registration* — Michigan students are registered for assessments, including assignment of class/group numbers for test administration/proctors, and the same or different class/group numbers for reporting using the pre-identification component of the DAS Secure Site.

Theta Value — Estimate of the relationship between a test item and the underlying attribute that is being measured. A distinction is made between the values that are actually obtained in a test setting and a hypothesized "true" underlying value.

UIC (Unique Identification Code) — A State-assigned code that allows the State to track student information without using a student's name.

WorkKeys® — A job skills assessment system that helps employers select, hire, train, develop, and retain a high-performance workforce.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is to provide materials, processes (including quality assurance) and services to execute all Standard Setting aspects of assessment programs and projects for the Michigan Department of Education (MDE).

The Contractor must use a coordinated approach with MDE staff and other MDE Contractors and stakeholders to plan and implement all tasks, subtasks, and activities related to this Contract that are to be conducted over the duration of this Contract.

1.012 Background

Michigan's educational system consists of 56 Intermediate School Districts with 549 local school districts and 256 public school academies. Altogether, there are 3,536 schools serving over 1.5 million students.

The MDE is responsible for development and administration of multiple K–12 student assessment programs, as well as the high-stakes use of the results of those programs for accountability and evaluation purposes. Therefore, the work performed by the Contractor(s) must be of the highest quality, and must conform to the most recent *Standards for Educational and Psychological Testing* as published by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. To this end, the methods used for the establishment of performance standards (cut-scores) must be of the highest technical quality.

The setting of standards will take place at various times depending on the development/maturity of the testing programs involved. As has been disclosed, numerous assessments are being created to assure adherence to both Federal and State requirements; other assessments are being modified to allow for alignment and repurposing. The commonality among all measures is that they will be used for multiple purposes including summative measures of status, measures of student growth and both of the aforementioned results being leveraged for educator evaluation. The stakes and pressure on the assessments to be valid and reliable for all intended purposes and uses makes it imperative that performance standards based on these assessments be established with confidence and accuracy.

1.020 Scope of Work and Deliverables

1.021 In Scope

The scope of the work for the Contractor includes the primary tasks listed in this Contract as well as all supporting tasks. Detailed descriptions of the primary tasks and required supporting tasks are listed in Section 1.022.

The MDE reserves the right to manage in-scope work and deliverables to ensure the best outcomes under this Contract. The MDE may, accordingly, substitute or modify work and deliverables on a generally equal basis, and may combine more than one element of the standard setting options described in Section 1.022 below. Such substitutions or modifications will be made in collaboration with the Contractor, in writing, and within the terms and conditions of this Contract. It is not the intent of this provision to increase the total scope of work or value of this Contract, but rather to ensure the MDE may access design changes incorporating innovations and best practices during the implementation of Contractor activities. The MDE reserves the right to add, modify, delete, or reallocate designated work and deliverables, along with associated budgets, across Contract line items to achieve scope management goals.

1.022 Work and Deliverables

The Standard-setting Contractor must work with the MDE to carry out standard setting or stakeholder meeting(s) for the purpose of establishing performance standards (i.e. cut scores) for new assessments, or for existing assessments, as necessary. The development of new scales via the introduction of new assessments or the amendment of old assessments, leads to the revision or establishment of performance standards. The activities vary depending on the situation but are always prompted by MDE offices working collaboratively to establish verbal descriptions of the knowledge, skills, and abilities that students banded in various ranges along the ability continuum will possess. These descriptions must then be linked to student performance in either judgmental or statistical standard setting activities, or a combination of both. (An example would include the use of statistical linkages between panelist judgments and MDE-provided student results on both the assessment being addressed and other assessments.) Standard setting may or may not involve the use of external committees in combination with MDE Measurement Research and Psychometric staff to design and carry out the analyses required to establish cut scores and performance level ranges. It is likely that future activities will also involve the setting of standards around student growth as well as the aforementioned standard setting for status.

For all standard setting committee meetings the Contractor shall be responsible for paying participants' per diem and travel expenses in accordance with Michigan state regulations. The Contractor staff attending standard setting meetings will include a psychometrician, a data analyst, an additional Research and Analysis staff member, facilitators, and program management staff members, who will assist with meeting logistics. The Contractor will be responsible for securing an appropriate meeting location in Michigan. It is anticipated that a standard setting committee meeting will take place over four days. We will provide all necessary materials for the meeting as well as any necessary equipment, supplies, and meals. We will obtain MDE 's approval on meeting agendas and standard setting procedures prior to conducting the meeting. In Appendix B of our proposal, we have provided a preliminary project schedule outlining all deliverables and timelines we propose for this contract.

Standard setting approaches available to MDE under this Contract which include, but are not limited to:

1) Modified Angoff Approaches

In the case of the modified-Angoff method, we have budgeted for 16 committee members per grade/per content area for each standard setting committee. As the MDE prefers, these may be any combination of teachers, school administrators, content specialists, legislators, or other stakeholders. Standard setting typically takes place in the following three phases: phase 1, preparation of materials for standard setting meetings; phase 2, the standard setting meeting itself, including training and orientation for the participants; and phase 3, all activities to be completed after the standard setting meeting.

Phase 1: Preparation of Materials

The Contractor will prepare all materials and handouts required for the standard setting meetings. Written procedures for the standard setting activities will be provided to MDE in advance for review and approval. Materials and handouts will include an opening session PowerPoint presentation, a script designed to guide the facilitators through the standard setting process, and all relevant test materials and confidentiality forms.
The following materials will be produced and used during the standard-setting meeting:

- Assessment Items—secure, numbered, and bound copies of assessment items, by content area
- Answer Keys—multiple-choice answer keys will be distributed to each participant following the administration of the test form
- Performance Level Descriptors—descriptors that describe what students at each performance level know and are able to do
- Rating Form—a form used by each participant to indicate their judgments for each item
- Evaluation Form—an anonymous evaluation each participant will complete at the end of the standard-setting process

Phase 2: Standard-Setting Meeting

Procedures: Overview
Prior to beginning the rating activities, the participants will attend a whole-group orientation session. In this session, participants will be given an overview of the assessments, a description of the purpose of standard setting, and an overview of the modified-Angoff method. The purpose of the opening session is to ensure that all participants have a common understanding of their task. The opening session will be conducted primarily by the lead psychometrician for the standard setting session. We anticipate that MDE staff will also be involved in the opening session presentation. After the opening session, participants will convene in their grade/content area groups where they will receive additional detailed information about the standard-setting process as well as content area-specific training. The Contractor staff member(s), approved by the MDE, will be assigned to each committee and will serve as the process facilitator.

Take the Test
In this part of the process, participants will begin by taking the test. The purpose of this activity is two-fold, first to give participants their first in-depth look at the test items; and second, to remind participants of the experience a student faces when taking an on-demand assessment. Participants will then be given the answer key.

Review the Performance Level Descriptors
Facilitators will read through the performance level descriptors (PLDs) with the participants and lead a discussion of each level. Participants will spend some time discussing the descriptors and coming to a common understanding of them, focusing on the skills and abilities that distinguish students performing in adjacent levels. It will not be the charge of the panelists to edit or attempt to modify the PLDs in any way.

Training Round
Before participants begin the actual rating task, they participate in a training round using a subsample of items from the test. The facilitator will guide the participants through the estimation task, ensuring that each participant understands the task at hand. Once the training round is complete, participants will be asked to complete an anonymous evaluation of the standard-setting training, their level of comfort with and understanding of the estimation task. They are given the opportunity to clarify any uncertainties they may have about the standard setting process.

Rating Rounds
Generally, ratings are done in three rounds. In the first round, participants are asked to work individually, without consulting with their colleagues. Participants are asked to review each test item and estimate the probability that a group of students would answer the item correctly. The group is defined as a group of students who just surpass the hypothetical borderline between acceptable and unacceptable achievement for the performance level of interest (Cizek & Bunch, 2007) 1. It is recommended that panelists begin first with the proficient/non-proficient cut that is of most interest.

When a test consists of polytomously-scored subdomains, the estimation task can take a variety of forms ranging from estimating the percent of students who score at each subdomain score point (proportional method) to estimating the average score that would be obtained on each subdomain (mean estimation method). Research comparing the various derivatives of the Angoff method has shown the mean estimation method to be easy to implement, well understood by participants, and less cognitively challenging than the proportional method in that it requires fewer judgments. In addition, research indicates that the participants find it easier to understand how adjustments in their estimations will influence the cut score using mean estimation (Loomis & Bourque, 2001).

Beginning with the first item, participants will evaluate each item in turn. Participants will be asked to estimate the average score that would be obtained for a group of borderline students, who barely meet the definition of each performance level, on that item. Each participant will make three estimates for each item—one for each cut score. The data describing the estimated average score for each item will be collected using a rating form. Using data entry software written for the standard setting process, Measured Progress staff will input this data. The cut-scores for the Angoff method will be determined by summing the individual item scores for each participant and then averaging this sum across participants. Along with the average, the standard deviation of the group threshold scores will also be computed.

Prior to the second round of ratings, participants will be given feedback as to how much agreement or disagreement there was among the participants' ratings. In addition, participants will also be provided with p-value (mean score) information to help place a context around their estimations. The participants will then engage in a discussion about the Round 1 ratings. Participants will be encouraged both to share their own opinions and to listen to the arguments made by their colleagues. Once all discussions have been completed, the participants will have an opportunity to make changes to their estimations. Participants may choose to modify their Round 1 estimations in light of the group discussion or they may leave their ratings as they were. Participants will complete the Round 2 rating forms, which will be submitted for analysis.

After Round 2, participants will once again be given feedback as to the group's ratings. In addition, impact data will be presented to the participants. The impact data will consist of the percentage of students that would fall into each performance level if the Round 2 group average cut-points were used. The group facilitator will then once again lead a whole-group discussion of the cut score placements. As part of the discussion, they will also consider the impact data. The impact data is provided as a "reasonableness check" for the placement of the cuts according to the Round 2 results. Participants consider whether the percentage of students in each performance level category seems reasonable to them; if not, they may decide to change one or more of their item estimations.

As with Round 2, the purpose of the discussions is for participants to share their rationale for ratings. Once the discussions have been completed, the participants will do their Round 3 ratings, in which they may choose to modify their Round 2 ratings in light of the discussion. The Round 3 ratings are the participants' final recommendations.

During the standard setting meeting, special attention will be given to establishment of the vertical scale. More specifically, both the make-up of the panels and the presentation of the feedback information for each round will be carefully vetted to ensure that it validates the coherence of the cut-scores across grades. Measured Progress will work closely with MDE to ensure the standard setting procedure implemented, optimizes the validation of the scale.

Participant Evaluation
During the standard setting meeting, in order to provide evidence of the participants' views of the standard setting, participants will be given an opportunity to participate in an anonymous evaluation of the standard-setting process.

This evaluation will consist of participants completing a questionnaire after they have completed all other standard-setting activities. Measured Progress also offers the opportunity to complete an evaluation at multiple points during the standard setting meeting upon MDE request.

Security of Materials
Throughout the standard setting process, security of the materials will be of the utmost concern. Participants will be required to sign a confidentiality and non-disclosure statement before they are allowed to see any Michigan materials. All test-related materials will be collected and accounted for at the end of each day, and Measured Progress will have designated staff responsible for material security during meals and break times throughout the standard setting meeting. In order to prevent electronic theft, during the time the participants have access to any test related materials, the use of cell phones, tablets, cameras or other portable electronic devices which could be used to record or capture test material will not be permitted. Participants will be instructed to store such devices out of reach, for the duration of the time test related materials are in use.

Phase 3: Activities Completed After the Standard-setting Meeting

Review of Participant Evaluations
After the standard setting meeting, Measured Progress staff will review and analyze the results of the participants' evaluations. The review of the evaluations can provide several important types of information.

- Participants may identify problems in the standard-setting process that they may be hesitant to bring up during the meeting.
- Participants' responses will provide important information about the validity of the process.
- Responses for individual participants may indicate that they did not fully understand the process.

In the unlikely event that problems or concerns arise from the results of the evaluations, Measured Progress may recommend adjustments to the final cut-scores, as appropriate.

Preparation of Final Recommended Cut Scores
Final results of the standard-setting meeting, in the form of a series of tables containing the recommended cuts and impact data, will be presented to the MDE, at the end of the final day of standard setting. Within two business days of the completion of standard setting, an executive summary of the standard setting procedure will be provided to the MDE. The executive summary will cover information around the recommended cut points and provide assurances that our procedures were implemented and executed as planned. Measured Progress will work closely with MDE to synthesize the participant recommendations and impact data and to establish valid and defensible cut scores for the Michigan assessments.

Preparation of Standard-setting Report
The final step in the process is for our psychometrician to prepare the standard setting report to document the procedures and results of the standard setting meeting in order to establish performance standards. This report will be provided within two to four weeks of the standard setting conclusion, depending on when the review is scheduled and the amount of time needed for revisions. Proper documentation is a necessary condition for procedural validity of any standard setting. (Reckase, 2001).

2) Item Mapping

In the case of the Item Mapping approach of standard setting, we have budgeted for 16 committee members per grade/per content area for each standard setting committee. The Item Mapping method was designed for use with tests composed entirely or largely of selected-response items. Our psychometrics staff will work in cooperation with the MDE to ensure that the standard-setting process selected is valid and supports the goals and purpose of Michigan's assessment programs.

There are different methods of setting cut scores within this approach including *item mapping procedure* (Loomis, Bay, Yang, & Hanick, 1999)4, and *item mapping method* (Wang, 2003). According to Cizek and Bunch (2007), one of the most popular standard setting method based on item mapping approach is the *bookmark procedure* (Mitzel, Lewis, Patz, & Green, 2001). The *bookmark procedure* of Mitzel et al (2001) is different from the methods described by Loomis et al (1999) and Wang (2003) in one important respect: the use of a physical item map. The *item mapping method* described by Wang (2003) employs a consensus process in arriving at a cut score instead of using a measure of central tendency (i.e., mean or median) of the participants' individual cut scores.

For all of the methods based on item mapping, each participant individually examines the items, and for each item assesses whether a student performing at the borderline of a performance level would answer each question correctly.

An item mapping approach that follows the *bookmark procedures* and uses an item map as feedback is the *mapmark method.* This method was developed by ACT, Inc. (2005)7 for the National Assessment Governing Board to set achievement levels on the 2005 National Assessment of Educational Progress (NAEP) in grade 12 mathematics. In 2011, Measured Progress implemented the *mapmark method* in a judgmental standard setting process to set academic preparedness cut scores on the 2009 NAEP in grade 12 reading and mathematics (Measured Progress & WestEd, 2011). For this effort, Measured Progress developed Computer-Aided Bookmarking (CAB) which is a fully computerized implementation of the bookmark method described in Bay (2012).

The description below is more akin to the bookmark method, but easily adaptable to any item mapping approach to standard setting. There will be three phases in setting cut scores using the Item Mapping approach: phase 1 includes preparation of materials for standard setting meetings; phase 2 consists of the standard-setting meeting itself, including training and orientation for the members; and phase 3 consists of all activities to be completed after the standard-setting meeting. Each of these steps is described below.

Phase 1: Preparation of Materials

The Contractor will prepare all materials and handouts required for the standard-setting meetings. Written procedures for the standard-setting activities will be provided to the MDE in advance for review and approval. Materials and handouts will explain the activities planned for the standard-setting committee so that members understand what to expect during the meetings.

Phase 2: Standard-Setting Meeting

Preparatory Analyses
The Contractor recommends that standard setting be conducted following the administration. Item Response Theory (IRT) scaling will be used to rank-order the selected-response item score points by difficulty from least to most difficult. The probability level used to place items on the IRT scale will be 67% (this is referred to as response probability 67 or RP67). The choice of RP67 over other possible values (e.g., RP50) is based on standard practice within the standard-setting community as well as research supporting the use of that particular value [see, for example, Karantonis & Sireci (2006); Huynh (2006)]. To help illustrate the level of ability exhibited at each score point, two student responses will accompany each score point for each constructed-response item in the ordered item book.

Training Activities
Prior to beginning the rating activities, participants will attend a group orientation session. In this session, participants will be given an overview of the assessment, a description of the purpose of standard setting, and an overview of the process they will go through to set standards. The purpose of the opening session is to ensure that all participants have a common understanding of their task. The opening session will be conducted primarily by Measured Progress's lead psychometrician for standard setting with support from the MDE psychometric unit. Additionally, the Contractor staff will include members of the Michigan program management team and the Contractor will act as facilitator for each grade-level group. We expect that MDE staff will also want to be in attendance. After the opening session, participants will reconvene in their grade-level groups, where they will receive more detailed information about the standard-setting process as well as specific training for their grade level. The Contractor staff member, approved by the MDE, will be assigned to each committee and will serve as the process facilitator.

Materials
The following materials will be produced and used during the standard-setting sessions:

- Assessment Items—secure, numbered, and bound copies of Michigan items
- Answer Keys—selected-response answer keys and constructed-response item rubrics will
- be distributed to each participant following the administration of the test form
- Ordered-Item Booklet—arranged one item per page, in scale order with the easiest item
- first and the most difficult item last, representing the depth and breadth of the item pool
- Item-List Form—lists items in the same order as the ordered-item booklet; includes
- spaces for the participants to record both the specific knowledge and skills being
- measured by each item and why each is more difficult than the preceding items
- Rating Form—used by each participant to indicate their judgments as to where the cut
- points should be placed in the ordered-item booklet

- Evaluation Form—an anonymous evaluation for participants to provide feedback on the standard-setting process

Take the Items
Participants will take a sample of items across the difficulty continuum represented in the item bank. The purpose of this activity is to give participants their first in-depth look at the test items and to remind them of the experience a student faces when taking an on-demand assessment. So the sample of items will be selected from the pool to be representative of the range of items in the pool as well as the items students might face in a testing session.

Following this exercise, participants will be given answer keys.

Review the Ordered-Item Booklet
Next, participants will be provided with an ordered-item booklet. Each page in the booklet will contain a single item. Using IRT scaling, the ordered-item booklet will be arranged in scale order with the easiest item first and the most difficult item last. Facilitators will lead the group through the first few pages of the ordered-item booklet and explain the booklet's setup. The facilitator will also explain that each constructed-response item is represented in the ordered-item booklet once for each possible score point. The participants will then be asked to individually review every fifth page or so in the booklet and to recognize the increasing difficulty of the items as they progress through the booklet.

Complete the Item-List Form
After reviewing the ordered-item booklet, participants will complete the item-list form. The facilitator will point out that the items appear in the same order as in the booklet, and will walk them through the process using the first few items. Participants will then continue the exercise individually for the rest of the items to determine: 1) the knowledge, skills and abilities measured by each item; and 2) why each is more difficult than the preceding items.

They will record this information on the item-list form. Although participants will work on this task independently, they will be given an opportunity for group discussion of any questions or issues that arise.

Review the Performance Level Descriptors and Create Borderline Descriptions
The training on the performance level descriptors (PLDs) starts with the facilitator presenting to each group the descriptions that have been provided by the MDE. Participants will create a bulleted list of characteristics of students who are at the borderline of each performance level. This list will help them in the ratings when they need to determine whether a student at the borderline is able to respond to an item correctly. The goal is for standard-setting participants to have a firm grasp of the content being assessed as well as a solid understanding of the knowledge and skills that need to be demonstrated to differentiate students in each of the performance levels.

Rating Rounds
Generally, ratings are done in three rounds. In the first round, members are asked to work individually, without consulting with their colleagues. Starting with the first item in the ordered-item booklet, and using the PLDs, borderline descriptions, and the completed item list form as guides, participants will evaluate each item in turn. They will be asked to assess whether a student performing at the borderline of a performance level would answer each question correctly. Because the items increase in difficulty, at some point, the borderline student will no longer be able to correctly answer the item under examination. Each participant will determine individually where he/she thinks that point is, and place their bookmark there. This will be done for each cut score and the bookmark placements will be recorded on the rating sheet. Rating sheets will be submitted to the data analysis team for data entry and analysis.

Prior to the second round of ratings, participants will be provided with the Round 1 average cut-score locations in relation to the ordered-item booklet. The participants will then engage in a discussion about the Round 1 ratings, and they will be encouraged both to share their own opinions and to listen to the arguments made by their colleagues. Once all discussions have been completed, the participants will have an opportunity to make changes to their bookmark placements. Participants may choose to modify their Round 1 ratings in light of the group discussion or they may leave their ratings as they were. Participants will then complete the Round 2 rating forms, which will be submitted to the data analysis team for analysis.

After Round 2, participants will once again be provided with the average cut score locations. In addition, impact data will be presented to the participants. The impact data will consist of the percentage of students that would fall into each performance level if the

The round 2 group average cut scores were used. The group facilitator will once again lead a whole-group discussion of the bookmark placements. As part of the discussion, they will also consider the impact data. The impact data is provided as a "reasonableness check" for the placement of the cuts according to the Round 2 results.

Participants consider whether the percentage of students in each performance level category seems reasonable to them; if not, they may decide to change one or more of their bookmark placements.

As with Round 1, the purpose of the discussions is for participants to share their rationale for ratings. Once the discussions have been completed, the participants will do their Round 3 ratings, in which they may choose to modify their Round 2 ratings in light of the discussion. The Round 3 ratings are the participants' final recommendations.

Phase 3: Activities Completed After the Standard-setting Meeting
After the standard-setting meeting, The Contractor will staff will review and analyze the results of the participants' evaluations. The review of the evaluations can provide several important pieces of information:

- Participants may identify problems in the standard-setting process that they are hesitant for some reason to bring up during the meeting.
- Participants' responses will provide important information about the validity of the process.
- Responses for individual participants may indicate that they did not fully understand the process.

In the unlikely event that problems or concerns arise from the results of the evaluations, the Contractor may recommend adjustments to the final cut scores, as appropriate.

Preparation of Final Recommended Cut Scores
Final results of the standard-setting meeting, in the form of a series of tables containing the recommended cuts and impact data, will be presented to the MDE, at the end of the final day of standard setting. Within two business days of the completion of standard setting, an executive summary of the standard setting procedure will be provided to the MDE. The executive summary will cover information around the recommended cut points and provide assurances that our procedures were implemented and executed as planned. Measured Progress will work closely with MDE to synthesize the participant recommendations and impact data and to establish valid and defensible cut scores for the Michigan assessments.

Preparation of Standard-setting Report
The final step in the process is for our psychometrician to prepare the standard setting report to document the procedures and results of the standard setting meeting in order to establish performance standards. This report will be provided within two to four weeks of the standard setting conclusion, depending on when the review is scheduled and the amount of time needed for revisions. Proper documentation is a necessary condition for procedural validity of any standard setting. (Reckase, 2001).

3) Contrasting Groups

Setting standards using a contrasting group approach does not require a panel to be assembled. For this effort, the Contractor will use teacher ratings of students. Relatively little effort is needed to implement this method. First, the answer documents would include a grid in which teachers will record their ratings. Second, a brief instruction packet would be provided for teachers. The packet would include the subject-specific definitions, illustrative student work, and directions for encoding ratings. The analyses of the relationship between the teachers' classifications of students and test performance, needed to determine cut points, are quite simple. This Contrasting Groups method is proposed for several reasons. First, it can provide additional information for the MDE to use in setting final cut points, or it can be used as evidence of validity. Second, the involvement of large numbers of local educators enhances credibility. Third, through the process, local educators gain an understanding of the standards of performance ultimately used in the program.

Data for this standard setting effort will be available to psychometricians shortly after test administration when student answer documents are scanned. Resulting cut scores from analysis of contrasting group data will be presented to the MDE for review and consideration. A standard setting report will be produced at the request of the MDE

The exact schedule for standard-setting activities is dependent on field-testing schedules. Typically, it is the MDE preference to conduct standard setting/establishment of performance standards once psychometrically desirable sample sizes have been used to collect item and test-level data to support the methods. The most likely timeframe is immediately following (2-3 weeks) the administration of the assessment(s). Note that for the contrasting groups approach, the Contractor must work with MDE to ensure that the necessary data collection elements are available to test administrators/teachers as appropriate.

The Standard-Setting Contractor will be responsible for recruitment of participants, logistics, preparation of standard setting materials, and documentation of the proceedings. MDE Psychometric staff will specify the appropriate methodology for the proceedings and will provide oversight to the process, analysis, and production of reports.

After the standard-setting meeting, The Contractor staff will review and analyze the results of the participants' evaluations. The review of the evaluations can provide several important pieces of information: Participants may identify problems in the standard-setting process that they are hesitant for some reason to bring up during the meeting. Participants' responses will provide important information about the validity of the process. Responses for individual participants may indicate that they did not fully understand the process.

1.024 Conducting Meetings

Throughout the term of this Contract, there will be many meetings pertaining to the tasks covered by the Statement of Work. The Standard Setting Contractor must be responsible for arrangements and compensation for all meetings related to that set of activities as specified in this Contract.

There are basic and specific meeting responsibilities. The basic meeting responsibilities are required of the Contractor for all meetings identified for this Contract. Requirements gathering and UATs are examples of basic meetings. Failure by the Contractor to provide any of the responsibilities listed in this section may result in non-payment of all costs related to the respective meeting(s) and require the Contractor to arrange and pay for a replacement meeting.

A. Basic Meeting Responsibilities of Contractor(s)

1. In consultation with MDE, identify meeting titles, dates, and attendees.
2. Locate, reserve, and pay for a facility on the date(s) identified. The facility must have:
   a. Seating capacity for the expected attendees
   b. A large display screen that can easily be seen by all attendees
   c. ADA compliance
   d. Unless specifically indicated to the contrary, all meetings will be held in Lansing, Michigan.
1. Arrange and pay for overnight accommodations for multi-day meetings for any attendee traveling between 50 and 150 miles to the meeting.
2. Arrange and pay for overnight accommodations for the night before, the night(s) during, and the night following any meeting for any attendee traveling more than 150 miles to the meeting.
3. Provide transportation for any attendee traveling out of the State.
4. Must have written approval from MDE's director before transportation arrangements are made
5. Provide refreshments (water, coffee, tea, juice, soft drinks, and healthy snacks) for all attendees.
6. Provide healthy lunches to all attendees for meetings lasting more than four hours and beginning at or before 12 noon local time.
7. Prepare an agenda for the meeting.
8. Send out and track invitations to each meeting. The Contractor will use a web-based registration and tracking tool for participant registration. In addition to providing participants with an electronic registration platform, the system provides an effective means of delivering electronic communications, such as meeting agendas, notes from previous meetings, confirmation notices, and driving directions to participants. We can capture and update important participant information, including contact information, qualifications, and demographic characteristics.
9. Send copies of agenda with invitations.
10. Provide copies of notes from previous meetings

11. Set up and provide a sign-in sheet with the title and date of each meeting.
    a. Ensure that all attendees sign in, including Contractor's staff, MDE staff, and committee members.
    b. Set up a separate sign-in sheet for each date of a multi-day meeting. For example, if one meeting lasts two days then there must be a separate sign-in sheet for each day.
    c. The original sign-in sheets must be given to MDE within five business days following the meeting.
    d. The Contractor must retain a copy of the sign-in sheets for up to two years following the end of the term of the Contract.
12. Prepare and maintain accurate minutes of each meeting.
    a. Send MDE a copy of the minutes within three business days following the meeting.
    b. Publish final minutes and any stakeholder comments to a password-protected shared data source.

B. Responsibilities of Contractor(s) for Specific Meetings

1. Management Meetings
   a. At least four members of MDE staff will meet at least monthly with at least four of the Contractor's key staff to review completed, current and future tasks and their timelines.

1) During the first year of this Contract, or during peak times, these meetings may be held weekly.
2) The Contractor Leads for key tasks must attend these meetings unless otherwise indicated in writing by MDE.
3) MDE reserves the right to require other Contractor staff who are key for specific activities to attend one or more of these meetings. MDE will provide written notification (to the Contractor's Project Manager) requiring the attendance of any such individual in reasonable time for the request to be accommodated.

b. Four management meetings, one every three months, must be in-person meetings, which can rotate between MDE's office in Lansing, MI, and the Contractor's primary facility. These meetings are not the same as the Executive Management Meetings.
c. Web conferencing or teleconferencing can also be used.
d. The MDE Contract Change Request Control Statement must be read at the beginning and at the conclusion of all management meetings.

2. Executive Management Meetings
   a. At least three of each of MDE's and the Contractor's senior officers must meet at least twice a year to review overall Contract performance.
      1) These are high-level meetings to review project goals, assess foreseeable risks, address major issues, and discuss financial matters.
      2) The frequency of these meetings may be increased at the discretion of MDE's Executive Director.
   b. These are all in-person meetings.
   c. The meetings will be held in rotation between the Contractor's primary facility and MDE's office in Lansing, MI.
   d. The first meeting must be held within 60 calendar days of Contract award.
   e. The MDE Contract Change Request Control Statement must be read at the beginning and at the conclusion of all executive management meetings.
3. Technical Advisory Committee (TAC) Meetings
   The TAC is a panel of nationally recognized assessment experts who provide advice to MDE on complex assessment-related issues. The TAC meetings are conducted and coordinated by MDE. They are typically convened four times per year and last up to two days each. Since most of the meetings tend to address assessment administration topics, by invitation, MDE may request the presence of two representatives from the Contractor's staff. Therefore, for budget purposes the Contractor should plan to send two staff four times per year, payable only in cases in which the staff are in attendance.

1.025 Program Development/Assistance

There are many stakeholders involved with various facts of administering and reporting results of Michigan's Statewide assessments. At times, there are requests for research, training or special reporting related to Federal or State mandates. Together with its Contractor(s), MDE expects to be able to handle most of these requests.

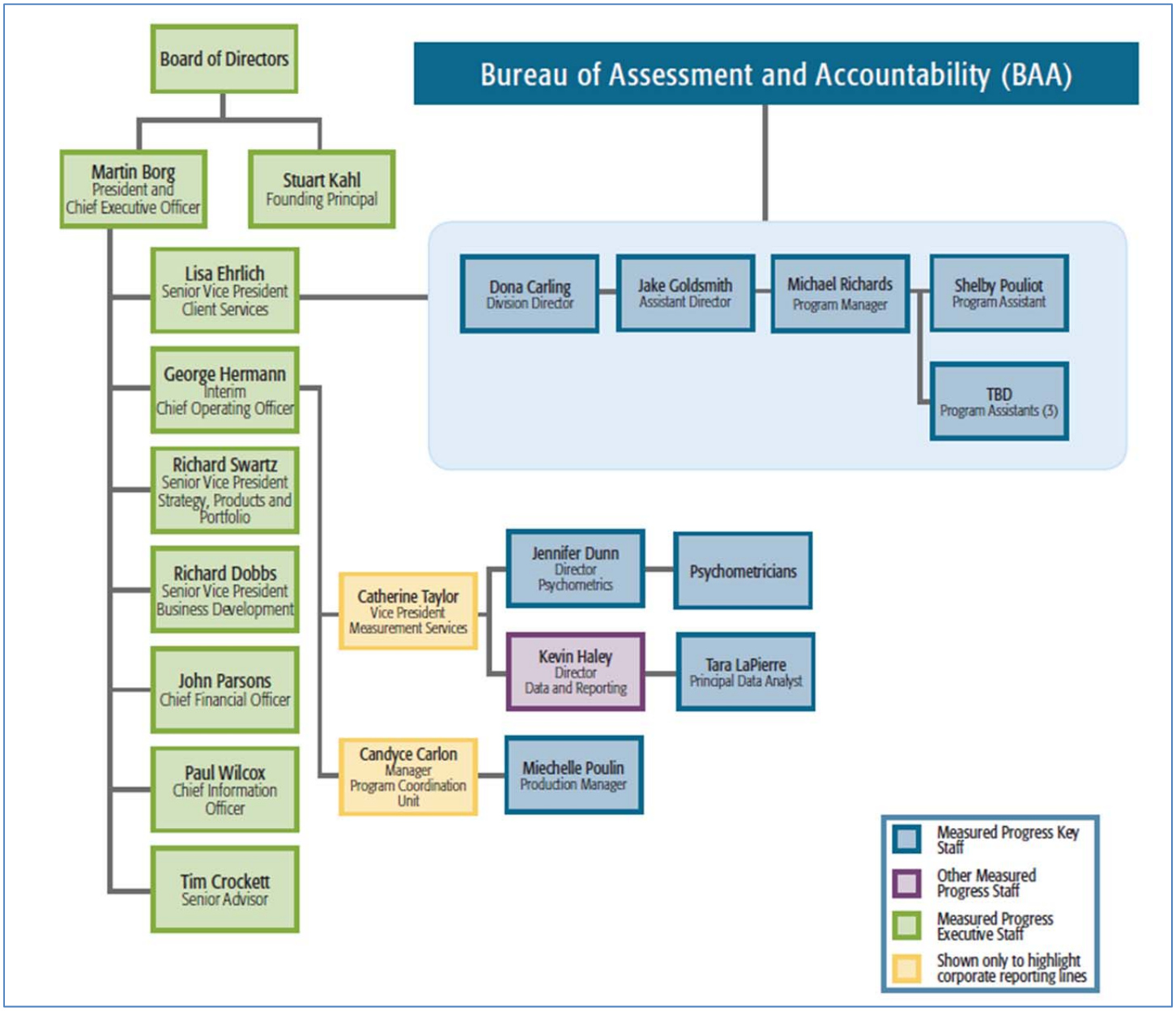
In addition, staff may need to attend specific training sessions to maintain their expertise in the programs identified in this Statement of Work. Staff may also be required to provide training to large groups of stakeholders regarding one or more of the administration and reporting activities.

Upon written approval of the MDE-DAS Executive Director, the Contractor must contract with and compensate individuals and organizations selected by the MDE-DAS Executive Director to cover the aforementioned needs within this section. Line items are included in the price sheet related to this section.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor's staffing organization chart submitted for this Contract is shown below. The chart includes the staffing plan assigned to fulfill the tasks and activities as presented in this Contract.



The Contractor's Key Management Team

The Michigan program management team will be led by Dona Carling, Director of Client Services. Ms. Carling will oversee the implementation and coordination of all aspects of this Contract.

Mr. John Farias, Program Manager, will manage the day-to-day aspects of this Contract including timeline, deliverables, tracking and status reports, meetings, test production and problem resolution. He will oversee all internal activities impacting this Contract and acting on behalf of The MDE to ensure that contract deliverables and activities remain on schedule. Mr. Farias will also be responsible for overseeing the work performed and the deliverables required from the subcontractor HumRRO.

1.040 Project Plan

1.041 Project Plan Management

A. Preliminary Project Plan

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

1. The Preliminary Project Plan must include the following:
   a. MS Project schedule
      - Internal milestones
      - Task durations
      - Deliverable target dates and critical paths
   b. Project approach / Statement of Work
      - Scope Statement with a description of the deliverables to be provided under this Contract
   c. Assumptions and exclusions
   d. Critical success factors
   e. Initial resource plan with anticipated resources by organization, role, and responsibility
   f. Initial risk plan
   g. Initial communication plan
   h. Anticipated hardware, materials, and supplies to be provided by the State in meeting the target dates established in the Preliminary Project Plan

2. The Preliminary Project Plan must include the following milestones with anticipated subtasks:
   a. Phase 0 – Pre-Project Initiation
   b. Phase 1 – Initiation and Planning
   c. Phase 2 – Requirements Definition
   d. Phase 3 – Functional Design
   e. Phase 4 – System Design
   f. Phase 5 – Construction / Configuration
   g. Phase 6 – Testing
   h. Phase 7 – Implementation
   i. Phase 8 – Training and Documentation

See **Section 1.050** for acceptance criteria.

B. Orientation Meeting

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

C. Performance Review Meetings

The Contractor must attend bi-weekly or monthly meetings to review the Contractor's performance under this Contract. The meetings must be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

D. Project Control

1. The Contractor must carry out this project under the direction and control of MDE.
2. Within ten business days of the execution of this Contract, the Contractor must submit the project plan to the State Project Manager(s) for final approval. This project plan must be in agreement with **Section 1.022** and will include the following:
   a. The Contractor's project organizational structure.
   b. The Contractor's staffing table with names and titles of personnel assigned to the project. This will be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
   c. The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.

3. The Contractor (particularly the Contractor administering online testing) must manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates, and which is available at http://www.michigan.gov/suite.
    a. The Contractor must use an automated tool for planning, monitoring, and tracking this Contract's progress and the level of effort of any Contractor personnel spent performing Services under this Contract. The tool will have the capability to produce:
        1) Staffing tables with names of personnel assigned to Contract tasks.
        2) Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 30 calendar days, updated weekly or biweekly as directed by the State PM).
        3) Updates must include actual time spent on each task and a revised estimate to complete.
        4) Graphs showing critical events, dependencies and decision points during the course of this Contract.
    b. Any tool(s) used by the Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

1.042 Issue Management

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

The Contractor must identify to MDE how issues will be captured, reported and escalated within the Contractor's organization, including the issue escalation process and whether escalation will be based on age, severity, budget impact, etc. The State will escalate issues for resolution as follows:

Level 1 — Business leads / Subject matter experts
Level 2 — Project Managers / Project Leadership Team
Level 3 — Executive Team

Once an issue has been identified by the Contractor, the Contractor must follow these steps:

1. Immediately communicate the issue in writing to the CCI, MDE Director, the respective DAS Manager and other appropriate MDE staff.
2. The Contractor must log the issue into an issue tracking system which contains the following minimum elements:
    a. Description of issue
    b. Status
    c. Date reported
    d. Resolution deadline
    e. Date resolved
    f. Project impact (e.g., schedule, resources)
    g. Priority
    h. Assigned to
    i. Related risk
    j. Notes
3. Identify what needs to be done and resources needed to correct the issue.
4. Receive approval from the CCI for appropriate action.
5. Keep CCI and appropriate MDE staff informed on status of issue based on frequency established by the CCI.
6. At least monthly, provide a listing of all issues with their current status, deadlines to correct, and actual dates of completion that have occurred over the previous six months to the CCI.
7. The Contractor's response to Issue Management is provided below.

1.043 Risk Management

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project. If the unknown becomes known or the event occurs, a risk may escalate to become an issue.

Because the assessments within this Contract are large-scale and high-stakes, quality and deadlines are of utmost importance. Therefore, the risk assessment shall be reviewed, at minimum, during the Kick-Off meeting for each assessment cycle and shall include, but is not limited to, the following:

- Establishing a risk management plan including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.
- Reviewing the project plan and timelines to ensure resources are, or will be, available.
- Identify deadlines for items and assessment material designs to allow sufficient time to produce.
- Qualitative review and approval of assessment materials by MDE staff designated by the CCI; at a minimum of the beginning, middle, and end of production.

- Approval for actual quantities to produce shall be given in writing by the CCI, or designee.
- Accurate tracking of delivery, retrieval, logging, scanning, and storage of all assessment materials.
- Preventative maintenance and accurate calibration of scanning equipment.
- Identify data management and backup procedures.
- Perform school readiness on the equipment to be used for online assessment.

The Contractor must submit an initial risk management plan to the State for approval within 20 business days from execution of this Contract. The risk management plan must be in accordance with the State's PMM methodology. The Contractor must communicate the status of risks to the State's Project Manager weekly, as required or agreed, and the status will contain the following minimum elements:

- Risk
- Status
- Date documented
- Controlled
- Impact
- Description
- Trigger event
- Mitigation
- Likely project phase
- Owner

The Contractor is responsible for identification of risks throughout the life cycle of the project. Mitigating and/or eliminating risks will be the responsibility of the assigned party.

1.044 Change Management

Change management is defined as the process to communicate, assess, monitor, and control changes to system resources and processes. The State employs change management at the project level and in its administration of the Contracts.

The Contractor must employ change management procedures to handle requests that impact schedule or resources and such things as "out-of-scope" requests or enhancements. Change requests will be submitted to the Project Manager and must be approved by the State in writing before they are implemented. DTMB Procurement will issue an addendum to the Contract, via a Contract Change Notice, if the Change request is approved.

1.045 Reports

A weekly project status report is required from the Contractor to the State Project Manager on the topics of status, schedule, risks, issues, impediments, deliverables, change control, and accomplishments, beginning upon execution of this Contract for the duration of this Contract unless otherwise agreed to.

Reporting topics will include the following items:

- Project Status
- Planned % Complete
- Actual % complete
- Current SUITE stage
- Planned SUITE stage
- Planned Start Date
- Planned Finish Date
- Planned Hours
- Actual Start
- Actual Finish
- Actual Hours
- On Target for Completion (Y/N)
- New Forecast Completion Date
- # of Defects Identified
- # of Defects Resolved
- Pending Change Requests under the subheadings Corrective Actions and Enhancements
- Help Desk Issues
- Team Changes

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this Contract:

A. Materials produced match the design provided and approved in writing by the Contract Compliance Inspector.

B. The quantity of materials or services provided equals what was requested in writing by the Contract Compliance Inspector.

C. The quality of the materials meets the specifications of this Contract.

D. All materials produced have been accurately tracked and current location is on record. Any materials considered lost, misplaced, or in a condition of not readable are not acceptable.

E. All designated Contractor reports and data files meet the specification of this Contract.

F. All designated reports and data files are delivered to the State with acceptance in writing from the Contract Compliance Inspector.

G. Data entered into the online instrument are stored in a secure and environmentally controlled location during the length of this Contract.

H. All materials to be destroyed are done so in confidential manner.

1.052 Final Acceptance

Each cycle is a project and will be considered complete after:

A. The Contract Compliance Inspector has approved the Contractor's final reports.
The Contractor's final reports have been delivered to the appropriate location.

B. All final data files related to the cycle have been transferred to the State and approved by the Contract Compliance Inspector.

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services, Fixed Price, and Actual Costs List, see Attachment A. Invoices will be based on an annual P.O.

1.062 Price Term

Prices quoted are firm for the entire length of this Contract and the State will only pay for quantities and services requested and provided for and with a valid invoice.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices will not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices will not include the Federal Excise Tax.

1.064 Reserved

1.070 Additional Requirements

1.071 Reserved

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term
This Contract is for a period of two years, six months, beginning March 1, 2014, through August 31, 2016. All outstanding Purchase Orders will also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew
This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to four additional one-year periods.

2.003 Legal Effect
Contractor will show acceptance of this Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor will not proceed with the performance of the work to be done under this Contract, including the purchase of necessary materials, until both parties have signed this Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

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

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

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

2.006 Order of Precedence
(a) 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 will apply as limited by **Section 2.005.**

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

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

2.008 Form, Function & Utility
If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability
Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) 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 will be in writing and will 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
The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and Michigan Department of Education (MDE) (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DTMB-Procurement **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DTMB-Procurement for the Contract is:

Angela Buren, Buyer
Procurement
Department of Technology, Management and Budget
Constitution Hall, 1st Floor North
PO Box 30026
Lansing, MI 48909
Email Burena@michigan.gov
Phone (517) 284-7005

2.022 Contract Compliance Inspector
After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer of DTMB-Procurement, in consultation with MDE, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement**. The CCI for the Contract is:

Douglas Collier, Contract and Finance Mgr.
Office of Business Operations,
Department of Accountability Services
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909
collierd1@michigan.gov
(517) 241-4431
Fax 517- 335-1186

2.023 Project Manager
The following individual will oversee the project:

Vince Dean, Director
Office of Standards and Assessment
Department of Accountability Services
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909
DeanV@Michigan.gov
(517) 241-2694
Fax 517- 335-1186

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

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State will be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice will be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor will 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 the Contract and then ceases performing that work, the Contractor will, 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 will be deemed effective, if addressed to the State contact as noted in **Section 1.021** and the Contractor's contact as noted on the cover page of the contract, 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.

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

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

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

2.029 Assignments
(a) 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 requirements of 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.

(b) 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 will be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor will notify the State in writing at least 90 days before the assignment. The Contractor also will 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 and Contract or project to which it relates will not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the Contract and Contract are to be released without prior written approval of the State and then only to persons designated.

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

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

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

2.035 Future Bidding Preclusion
Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the Contract development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information
All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, 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 the Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

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

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

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

2.044 Invoicing and Payment – In General
(a) Each Statement of Work issued under the Contract will list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) Contract Payment Schedule

1. Contractor request for performance-based payment.
   The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the CCI. Unless otherwise authorized by the CCI, all performance-based payments in any period for which payment is being requested will be included in a single request, appropriately itemized and totaled.

2. Approval and payment of requests.
   a) The Contractor is not entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The CCI will determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Contract. The CCI may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.

   b) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **Section 1.061** of the Contract.

c) The approval by the CCI of a request for performance-based payment does not constitute an acceptance by the State and does not excuse the Contractor from performance of obligations under the Contract.

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

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

2.047 Final Payment
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the 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 the Contract will constitute a waiver of all claims by Contractor against the State for payment under the 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. The Contractor will register with the State electronically at http://www.cpexpress.State.mi.us. As Stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services will provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes
Contractors are expected to collect and pay all applicable Federal, State, and local employment taxes.

2.052 Sales and Use Taxes
Contractors if required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax will 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 (2) 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 the Contract will be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and will be fully qualified to perform the work assigned to them. Contractor will include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent Contractors engaged by Contractor solely in a staff augmentation role will be treated by the State as if they were employees of Contractor for the 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 will provide the CCI with the names of the Key Personnel.

(b) Key Personnel will 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 reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor will not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State will review any Key Personnel replacements and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor will notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

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

Unauthorized Removal of Key Personnel

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

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor does not identify a replacement to the State under **Section 2.060. The Contractor will be required to** assign a replacement to the Project who will shadow the Key Personnel or personnel of equal qualifications for at least 30 days prior to the transition if leave is known by Contractor..

If Contractor fails to assign a replacement of greater or equal to the qualification of the removed Key Personnel within 30 days of the Key Personal leave, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor will pay the amount of $833.33 per day for each day of the 30 day shadow period, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing will not exceed $50,000.00 per individual.

2.064 Contractor Personnel Location

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

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

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

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

2.068 Contract Management Responsibilities
The Contractor will assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract will include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors will be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

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

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

2.073 Subcontractor Bound to Contract
In any subcontracts entered into by Contractor for the performance of the Services, Contractor will require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the 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 is the responsibility of Contractor, and Contractor will remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor will make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

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

2.075 Competitive Selection
The Contractor will select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment
The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities
The State will designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor will have reasonable access to, and, unless agreed otherwise by the parties in writing, will 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 will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

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

2.092 Security Breach Notification
If the Contractor breaches this Section, the Contractor will (i) promptly cure any deficiencies and (ii) comply with any applicable Federal and State laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor will 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 Reserved

2.100 Confidentiality

2.101 Confidentiality
Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor will 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 will 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 the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information
The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract,

(ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who will have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor 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 will certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions
Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights
Nothing contained in this Section will 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 will survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed
The State's authorized representatives will 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 will 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 will 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 will provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records
For seven (7) years after the Contractor provides any work under the 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 will 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 will maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, 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 will 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 will be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution
If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State will 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
(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error will 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 (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

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

2.120 Warranties

2.121 Warranties and Representations
The Contractor represents and warrants:

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

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor will assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will 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 the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor will notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor will report those changes immediately to DTMB-Procurement.

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

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

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

2.125 Reserved

2.126 Reserved

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

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

2.130 Insurance

2.131 Liability Insurance
The Contractor will provide proof of the minimum levels of insurance coverage as indicated below. The insurance will protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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

All insurance coverage's provided relative to the Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance will be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor will 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 the Contract will be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State will 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 will 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 the Contract, the Contractor will 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 will 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 will be provided according to applicable laws governing the employees and employers work activities in the State of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof will be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the State of qualification, Contractor will provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received will 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 will 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

☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of $1,000,000.00 with a maximum deductible of $50,000.00.

☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars ($10,000,000.00), which will apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

☑ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: $5,000,000.00 each occurrence and $5,000,000.00 annual aggregate.

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy will cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State will be endorsed on the policy as a loss payee as its interests appear.

☐ 9. Cyber Liability Insurance with the following minimum limits:

$1,000,000 Each Occurrence
$1,000,000 Annual Aggregate

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

2.132 Subcontractor Insurance Coverage
Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor will require all of its Subcontractors under the 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 will fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements
Contractor will furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate will be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. 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. All Certificate(s) will contain a provision indicating that coverages afforded under the policies MUST NOT BE CANCELLED, MATERIALLY CHANGED, 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 Procurement, DTMB. The notice will 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 will provide evidence that the State and its agents, officers and employees are listed as additional insureds 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 will 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, will secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and will not be construed, to limit any liability or indemnity of Contractor under the 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 the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the 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 will pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification
To the extent permitted by law, the Contractor will 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 the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

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

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

2.144 Patent/Copyright Infringement Indemnification
To the extent permitted by law, the Contractor will indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties)

incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

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

2.146 Indemnification Procedures
The procedures set forth below will apply to all indemnity obligations under the Contract.

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor will, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor will periodically advise the State about the status and progress of the defense and will obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, will be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor will promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor will pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State will pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause will cease on the effective date of the termination.

(d) If the State terminates the 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 will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the 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 will 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 Contract issued by the State. The State may terminate the 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 the Contract in part, the charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause will cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State will terminate the 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 will give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State will pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction
The State may terminate the 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 the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date Stated in the written notice.

2.157 Rights and Obligations upon Termination
(a) If the State terminates the Contract for any reason, the Contractor will (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 the 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 will 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 the Contract before its expiration for its own convenience, the State will pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the 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 the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights
Any termination of the Contract or any Statement of Work issued under it by a party will 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 the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the 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 will discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

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

If the 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 6 Months. These efforts will include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor will work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor will 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 the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor will notify all of Contractor's Subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement will be governed by the termination provisions of the Contract. 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 the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others 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 will be identified as a stop work order and will indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor will 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 will either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor will resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract will be modified, in writing, accordingly, if:

(a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination will be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

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 will 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 will submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

(i) The representatives of Contractor and the State will meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives will 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 (1) 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 60 calendar days, the Director of Procurement, DTMB, or designee, will issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute will be considered the State's final action and the exhaustion of administrative remedies.

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

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

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

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination
In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices
Under 1980 PA 278, MCL 423.321, et seq., the State will not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, will not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register.

Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

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

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

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

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

2.210 Governing Law

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

2.212 Compliance with Laws
Contractor will comply with all applicable State, Federal and local laws and ordinances in providing the Services/Deliverables.

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

2.220 Limitation of Liability

2.221 Limitation of Liability
Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages.

This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

2.230 Disclosure Responsibilities

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

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor will provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors will be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor will make the following notifications in writing:
(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor will notify DTMB-Procurement.
(2) Contractor will also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
(3) Contractor will also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

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

2.233 Bankruptcy
The State may, without prejudice to any other right or remedy, terminate the 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 the Contract.

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

2.240 Performance

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

(b) Without limiting the generality of **Section 2.241(a),** Contractor will notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and will 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 will notify the State in a timely manner and will 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 Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.

(ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.

(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal will be presented to substantiate the proposal.

(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals will be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Liquidated Damages

It is understood and agreed by the Contractor that time is of the essence in the delivery of reports and data of the content and quality specified in this Contract. In the event these specified reports and data are not available by the dates specified in this Contract, the Contractor and the State agree that, if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of $1,000.00 per day for each day Contractor fails to remedy the late or improper completion of the Work which includes, but is not limited to Reports; except if the delivery is delayed by an act, negligence, or default on the part of the State of Michigan, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or Contractor's supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the Contractor or the Contractor's supplier(s), a reasonable extension of time as the MDE deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, the MDE may extend the time for performance of the Contract or delivery of goods therein specified, at the MDE's sole discretion, for good cause shown.

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, 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 will use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party will 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 will 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 Responsibilities

Unless otherwise specified by the State within an individual order, the following will be applicable to all orders issued under the Contract.

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract will be delivered "F.O.B. Destination, within Government Premises." The Contractor will have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise Stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise Stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State will examine all packages. The quantity of packages delivered will be recorded and any obvious visible or suspected damage will be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.
Where there is no obvious or suspected damage, all deliveries to a State Location will be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage will be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists 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"), a good ("Physical Deliverable") or a Service. All Deliverables will be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor will certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service 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.

(b) If a Deliverable includes installation at a State Location, then Contractor will (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable State of readiness for the State's review and approval.

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service 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/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses;

or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot 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.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 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 Deliverable (and if the Statement of Work does not State the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 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 before 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 Deliverable is approved in the form delivered by Contractor or describing any deficiencies that will be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 30 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 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 Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not State the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that will be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service 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 Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not State the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that will be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the 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 Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise Stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable will occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

1.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor will confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) 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 will only use personally identifiable information as strictly necessary to provide the Services and will disclose the information only to its employees who have a strict need-to-know the information. The Contractor will comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) 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 will disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State will comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor will comply with the State's Acceptable Use Policy, see http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor employees will 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 will be done according to applicable State procedures, including security, access, and configuration management procedures.

2.280 Reserved

2.290 Environmental Provision

2.291 Environmental Provision

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 such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor will use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all Federal, State, and local laws. The State will provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State will advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor will immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State will order a suspension of Work in writing. The State will proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State will terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor will resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor will bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

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

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

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract will not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

ATTACHMENT A – PRICING STRUCTURE

Standard Setting

			Measured Progress (BAFO)									
			Year 2013-2014			Year 2014-2015			Year 2015-2016			
		Unit Type	Quantity	Rate per Unit	Amount	Quantity	Rate per Unit	Amount	Quantity	Rate per Unit	Amount	Total 3 Years
	Measured Progress Standard Setting											
1	**Standard Setting (per meeting) (1.023):**											
2	Modified Angoff Approaches	Meeting	29	9,146.89	265,260	29	9,534.44	276,499	29	9,536.41	276,556	818,314
3	Item Mapping	Meeting	29	8,601.65	249,448	29	8,775.79	254,498	29	8,773.55	254,433	758,379
4	Contrasting Groups	Meeting	29	3,439.24	99,738	29	3,439.24	99,738	29	3,439.24	99,738	299,214
5	**Standard Setting Subtotal**				**614,446**			**630,735**			**630,727**	**1,875,907**