



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **071B4300036**

CURRENT CONTRACTOR	Voya Institutional Plan Services, LLC
	230 Park Avenue
	New York, NY 10169
	Brian Merrick
	(781) 796-9268
	brian.merrick@voya.com
	CV0000954

NEW CONTRACTOR	Voya Institutional Plan Services, LLC
	230 Park Avenue
	New York, NY 10169
	Brian Merrick
	(781) 796-926
	brian.merrick@voya.com
	VC0006175

STATE CONTACTS				
Program Manager	Anthony Estell	DTMB	Contract Administrator	
	(517) 284-4563			Joy Nakfoor
	estella@michigan.gov			DTMB
			517-249-0481	
			nakfoorj@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: FULLY-BUNDLED INVESTMENT AND ADMINISTRATIVE SERVICES FOR 401(K) AND 457 PLANS FOR THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET (DTMB), OFFICE OF RETIREMENT SERVICES (ORS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2014	December 31, 2018	2 – 2 Year	December 31, 2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
Firm for Length of Contract		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		December 31, 2022
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$136,551,343.45		\$0.00	\$136,551,343.45	

DESCRIPTION: Effective November 20, 2020 the following information has changed:

- 1) the SIGMA Vendor Customer is changed to VC0006175, fully under Voya, no longer Citistreet,
- 2) the State PM is changed to Anthony Estell (estella@michigan.gov, 517-284-4563), and

3) the State Contract Administrator is changed to Joy Nakfoor (nakfoorj@michigan.gov, 517-249-0481).

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



STATE OF MICHIGAN
ENTERPRISE PROCUREMENT
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1

to

Contract Number **071B4300036**

CONTRACTOR	Voya Institutional Plan Services, LLC
	230 Park Avenue
	New York, NY 10169
	Brian Merrick
	(781) 796-9268
	brian.merrick@voya.com
*****6284	

STATE	Program Manager	Kerri Vanden Bosch	DTMB
		(517) 636-6104	
		vandenboschk@michigan.gov	
	Contract Administrator	Joshua Wilson	DTMB
		(517) 284-7027	
		wilsonj31@michigan.gov	

CONTRACT SUMMARY

FULLY-BUNDLED INVESTMENT AND ADMINISTRATIVE SERVICES FOR 401(K) AND 457 PLANS FOR THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET (DTMB), OFFICE OF RETIREMENT SERVICES (ORS)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2014	December 31, 2018	2 - 2 Year	December 31, 2018
PAYMENT TERMS		DELIVERY TIMEFRAME	
Firm for Length of Contract		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 - 2 Year	<input type="checkbox"/>	N/A	December 31, 2022

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$119,351,343.45	\$17,200,000.00	\$136,551,343.45

DESCRIPTION

Effective August 22, 2017, this Contract is exercising both available two-year renewal options and is increased by \$17,200,000.00. The revised expiration date is December 31, 2022. Attachment A, Pricing is hereby amended incorporating the attached proposal dated May 4, 2017 reflecting the following rates:

- January 1, 2019 thru December 31, 2019 - \$22.00 per unique SSN
- January 1, 2020 thru December 31, 2020 - \$22.00 per unique SSN
- January 1, 2021 thru December 31, 2021 - \$21.00 per unique SSN
- January 1, 2022 thru December 31, 2022 - \$21.00 per unique SSN

Please note the Contractor's name is hereby updated to Voya Institutional Plan Services, LLC. The Contractor's primary contact's email is hereby updated to Brian.Merrick@voya.com.

Please also note that the Buyer is hereby changed to Joshua Wilson (Section 2.021).

All other terms, conditions, specifications and pricing remain the same per Contractor and Agency agreement, DTMB Procurement approval and State Administrative Board approval received 8/15/2017.

May 4, 2017

Anthony Estell
Director, Plan Development and Compliance Division
State of Michigan, DTMB, Office of Retirement Services

Re: Voya Proposal for Contract Extension with Price Concessions

Since 1997, Voya Financial and predecessor companies have partnered with the State of Michigan Office of Retirement Services to provide bundled recordkeeping and investment management services to the State of Michigan 457 and 401(k) Plans ("Plans"). These Plans have now grown to include over \$7 billion in assets for over 170,000 State employees, including public school employees. In 2013 we were thrilled to be selected by the State of Michigan to continue these services for an initial five year period, with the option for 2 two-year extensions.

It is our sincere desire to continue this mutually beneficial relationship. To that end, we have prepared the following proposal to offer a more competitive fee structure than we had originally included in our 2013 RFP response in order to secure years 6 through 9, subject to the terms of our executed Contract No. 071B4300036, as follows:

Years Ending	Original Pricing (per unique SSN)	New Proposed Pricing (per unique SSN)
12/31/2014 – 12/31/18	\$25.00	No change
12/31/19 – 12/31/20	\$23.75	\$22.00
12/31/21 – 12/31/22	\$22.50	\$21.00
Assumptions / Considerations:		
<ul style="list-style-type: none"> • Assumes that all participant statements will be mailed annually beginning with the Q1 2019 statements (statements will be run the other 3 quarters, and published to participant accounts, with electronic notification to those who signed up for electronic statement delivery) • Voya will add 2 additional local education representatives <ul style="list-style-type: none"> ○ Additional local education representatives may be added at a cost of \$.50 per unique SSN • All other fees and services remain the same 		

I am happy to discuss this proposal and any other ideas you may have to optimize this service model and fee structure to best support the employees and retirees of the State of Michigan.

Thank you for your consideration.

Kind Regard,



Brian Merrick
Vice President, Relationship Management
Voya Financial

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

**NOTICE
 OF
 CONTRACT NO. 071B4300036**
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ING Institutional Plan Services, LLC 30 Braintree Hill Office Park Braintree, MA 02184	Brian Merrick	brian.merrick@us.ing.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(781) 796-9268	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Kerrie Vanden Bosch	(517) 636-6104	vandenboschk@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title			
Fully-Bundled Investment and Administrative Services for 401(k) and 457 Plans for DTMB, Office of Retirement Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Five Years	January 1, 2014	December 31, 2018	2, Two Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Firm for Length of Contract	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$119,351,343.45	

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

CONTRACT NO. 071B4300036
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ING Institutional Plan Services, LLC 30 Braintree Hill Office Park Braintree, MA 02184	Brian Merrick	brian.merrick@us.ing.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(781) 796-9268	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Kerrie Vanden Bosch	(517) 636-6104	vandenboschk@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

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Firm for Length of Contract	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$119,351,343.45

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #071I3200038. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

Notice of Contract #: 071B4300036

FOR THE CONTRACTOR:	FOR THE STATE:
ING Institutional Plan Services, LLC	Signature
Firm Name	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
Date	Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
DTMB-Procurement

Contract No. 071B4300036
Fully-Bundled Investment and Administrative Services for 401(k) and 457 Plans for DTMB,
Office of Retirement Services

Buyer Name: [Don Mandernach](#)
Telephone Number: (517) 241-7233
E-Mail Address: mandernachd@michigan.gov



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Attachment A, Pricing



DEFINITIONS

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

Attachments, Exhibits, Tables

- **Attachments** means items attached with this RFP that are provided by the Office of Retirement Services to help in explaining and clarifying.
- **Tables** means items that are nested into the document to be completed by bidder.
- **Exhibits** means items that will be provided by the bidder- (examples MAY be included by the Office of Retirement Services to assist the bidder).

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

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

Business Day means any day other than a Saturday, Sunday, State-recognized legal holiday and U.S. stock market holidays from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

Business Critical means any function identified in any Statement of Work as Business Critical.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. 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.

EAA means Education Achievement Authority of Michigan.

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 toxics either disposed of or consumed.

Exhibits- see **Attachments, Exhibits, Tables** definition

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 the Contract).

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

JRS means Judges Retirement System



Key Personnel means any personnel identified in Section 1.031 (and/or attachments as included) as Key Personnel.

LRS means Legislative Retirement System

MPSERS means Michigan Public School Employees Retirement System

MRS means Military Retirement System

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided 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.

Personally Identifiable Information (PII) means any personal or confidential information about a living individual who is or can be identified from the data, which data is (1) subject to Data Protection and Privacy Laws and (2) provided to or made available to Contractor in connection with the provision of the Services to Plan Sponsor. For purposes of the foregoing, "Data Protection and Privacy Laws" means all U.S. federal and state laws, rules and regulations having the force of law applicable to the collection, use, storage or disclosure of personally identifiable data or sensitive personal information.

Plan Sponsor means the Office of Retirement Services.

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 which 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.

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

SERS means State Employees Retirement System

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.

SPRS means State Police Retirement System



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.

Tables- see **Attachments, Exhibits, Tables** definition

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 an in furtherance of performing the services required by the Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for Fully-Bundled Investment and Administrative Services for 401(k) and 457 Plans sponsored by the State of Michigan for its over 100,000 active and terminated participants, with some participants in both Plans.

1.012 Background

Initiated in 1975, the 457 Plan has currently grown to approximately \$1.67 billion in assets, 59,700 accounts with a balance, and 41,440 actively contributing participants. In 1985 the State of Michigan initiated the 401(k) Plan, which has grown to currently \$3.56 billion in assets, 100,600 accounts with a balance, and 65,280 actively contributing participants. The 457 Plan and 401(k) Plan are offered through:

1. A Deferred Compensation plan to Defined Benefit (DB) pension plan members who are State employees (including non-central agencies), judges and legislators hired on or before 3/31/1997, Michigan State Police hired prior to 6/1/2012; and State Bar employees. The 457 Plan may be offered to DB pension plan members who are public school employees hired prior to 7/1/2010 in the near future.
2. A Defined Contribution Retirement Plan (DCRP) for State employees, judges and legislators hired after 3/31/1997; Education Achievement Authority (EAA) employees; and Michigan Public School employees who first work on or after 9/4/2012, as well as those eligible employees hired before that date, who have made an election to participate in the DCRP.
3. A hybrid plan to Pension Plus Plan members of Michigan Public Schools who first worked on or after July 1, 2010, as well as Michigan State Police members hired after 6/1/2012.
4. A Personal Healthcare Fund for eligible employees as described below.

In 1996, the 401(k) Plan was amended to require all new State employees, judges and legislators hired after March 31, 1997, as well as existing employees who chose to convert from the DB Pension Plan, to receive a mandatory employer contribution of 4% of salary. In addition, if these employees made elective pre-tax contributions to the 401(k) Plan, they receive a 100% employer match of up to 3% of compensation. Additional employee elective contributions above 3% in the 401(k) Plan or 457 Plan were allowed up to the limit imposed by the Internal Revenue Service. Employees are 100% vested in any elective contributions. Employer mandatory and matching contributions are under a four-year vesting schedule (50% after 2 years, 75% after 3 years, 100% after 4 years). Employees who had a vested benefit in the DB Pension Plan and converted to the DCRP each received an actuarial equivalent of that plan benefit transferred to their 401(k) Plan account.

In 2010, legislation was passed creating a hybrid plan for members of the Michigan Public School Employees Retirement System (MPERS). As a result, the 401(k) and 457 plans were amended to allow public school employees to participate for the very first time. In addition to a base DB pension, new school employees hired on or after July 1, 2010, became eligible for a 50% match on elective contributions of up to 2% of compensation (i.e., a maximum employer contribution of 1%). There are approximately 31,700 members currently with a balance in this plan, known as the Pension Plus Plan.

In 2011, major pension reform legislation was signed into law for State employees. Under Public Act 264, all new employees hired on or after 01/01/2012, as well as active employees who so elected (as of 04/01/12), became eligible for a 100% employer matching contribution on additional employee contributions up to 2% of compensation in lieu of a State-funded retiree health care subsidy. This additional match program is known as the Personal Healthcare Fund (PHF). Approximately 3,600 active participants elected the PHF. Although these assets are part of the 401(k) and 457 plans, both the employer and employee contributions in each plan are record-kept and reflected on participant statements separately.



As a result of PA 264, the 401(k) and 457 plans were amended to include PHF 2% matching contributions, plus allow all DCRP participants to receive employer matching contributions in their 401(k) account based upon eligible elective contributions made to the 401(k), 457, or a combination of both.

State Police enlisted officers hired after June 1, 2012 are part of a hybrid plan called Pension Plus. Similar to the MPSERS Pension Plus, State Police Pension Plus members receive a base DB pension and an employer match in a DCRP. State Police Pension Plus members receive a 50% match on elective contributions of up to 2% of compensation (i.e., a maximum employer contribution of 1%) for the DCRP component of their retirement. State Police Pension Plus members may also participate in the PHF described above.

The EAA is a new Statewide school initiative that will include operating up to all of 5% of the lowest performing schools in Michigan not achieving satisfactory results on a redesign plan or that are under an emergency manager. EAA employees are participants in a DCRP within the 401(k) and 457 plans. EAA participants began contributing in 2012 into the 457 plan only, and receive a 100% employer match of up to 7.5% of compensation into the 401(k) plan.

In 2012, MPSERS underwent another reform initiative that allowed existing DB members to elect to become participants in the DCRP. Those who chose to switch to DCRP are eligible for a 4% employer non-matching contribution and to make elective contributions to the maximum allowed by the IRS. (The employees who had a vested benefit in the DB Pension Plan did not receive the actuarial equivalent of that plan benefit.) All members, both DB and Pension Plus, could also separately elect to forfeit their employer-paid retiree health subsidy and participate in the PHF, making them eligible to receive a 100% match on elective contributions of up to 2% of compensation (i.e., a maximum employer contribution of 1%.

New MPSERS employees hired on or after September 4, 2012 can either elect to participate in either the existing Pension Plus Plan or a DCRP for MPSERS employees as part of the reform. New employees who elect the DCRP receive a 50% employer matching contribution on elective DCRP contributions of up to 6% of compensation (i.e., a maximum employer contribution of 3%. In addition, all new employees participate in the PHF.

New DCRP participants in all retirement systems are now auto-enrolled to their maximum matched percentage, but no one part of the elective contributions can be used for the purposes of more than one matching contribution.

The 401(k) and 457 Plans are self-funded programs. The cost of administering the Plans is borne by the participants, currently through revenue sharing of investment management fees, flat fees for public school employees and EAA employees, and separate participant fees for certain transactions. There is no other source of revenue from the State of Michigan for the TPA.

The 401(k) and 457 Plans were administrated internally at the State using quarterly valuations until April 1, 1997 when the first outside administrator was hired to administer the plan using daily valuation accounting. All historic records were transferred to the TPA. The current TPA also provides Self-Directed Brokerage Accounts, Stable Value Investment management services, Manager Selection and Evaluation services and an Advice program.

1.020 Scope of Work and Deliverables

1.021 In Scope

All services including communication/education must be reviewed and approved by the State. The Contractor must provide services as described below:

- I. Transition from current record-keeper
- II. Recordkeeping & Administration
- III. Compliance



- IV. Custodial Trustee Services
- V. Customer service
- VI. Communication Services
- VII. Technology and Systems
- VIII. Investments and Fees
- IX. Transition Responsibilities Upon Termination

Out of Scope

- The Contractor will not be responsible for drafting Plan Documents or Amendments.

1.022 Work and Deliverable

The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

I. Transition from Current Record Keeper

A. Transition Compensation

- 1) The Contractor will receive no compensation until after implementation is complete and Contractor begins providing service.

B. Work Plan

- 1) The Contractor must provide, within 30 business days of Contract award, a work plan that covers the transition period starting three months before and ending on the Contract commencement date. This plan must include timelines, tasks, rules and procedures detailing all of the steps necessary to transition employee records, accounts and investments. This plan must also include consummating agreements and Contracts with the State's investment providers, including payments such as Revenue Sharing, 12(b)1 charges and brokerage account provider fees. This final implementation plan must focus on a January 1, 2014 implementation date and must be in agreement with the Contractor's proposal as accepted by the State for the Contract.
- 2) The Contractor must obtain approval of this plan, which must follow standard project management methodology, from the State prior to implementing the plan.
- 3) The Contractor must meet with State personnel throughout the duration of the transition at a frequency determined by the State.
- 4) The Contractor must manage the implementation plan through completion under the control of the State.

C. Participant Data

- 1) The Contractor will receive final participant recordkeeping files, both electronic and hard copy, from prior TPA (if applicable) and reconcile data received with data transmitted. Data received shall include participant level asset positions, demographic data, market values, detailed participant transaction history as well as customer service representative notes.
- 2) The Contractor must not have any limitations as to the format/media of participant data.

D. Data Transmission

- 1) The Contractor must develop appropriate software to allow for data transmission between the State and the Contractor.



- 2) The Contractor must test these systems prior to the conversion date until the Contractor and the State are mutually satisfied that the new system can sustain itself independently and operate with a high degree of accuracy necessary to guarantee the integrity of the plans.

E. Fund Mapping

- 1) The Contractor must ensure the accurate mapping of investments from the current provider (if applicable) to any new investment products. The conversion will not require a reenrollment.

F. Communications

- 1) The Contractor must develop all appropriate forms, statements, publications, newsletters, voice response system, email communications, websites, and other participant communications prior to the start-up date. The materials must be fully customizable and approved by the State.

G. Transition Education Plan

Please see section 1.122.IV for general communication requirements.

- 1) The Contractor must provide an education plan for the transition and for ongoing education of all employees. All materials must be approved by the State.
- 2) The Contractor must communicate with the State's active participants and inactive participants (i.e. retirees and terminated employees with assets in the Plans) no less than 30 calendar days prior to the conversion date.
- 3) The Contractor must conduct educational meetings throughout the State to review the upcoming changes. The number and locations of these meetings must be approved by the State. Some meetings may be done by videoconference or webinar. Some locations will require multiple meetings.

H. Investment Provider Contracting

- 1) The Contractor must complete the necessary administrative documents, contracts, etc. with all Michigan investment providers including the brokerage account and investment advisory providers, as necessary.

I. Financial Accounting and Asset Transfer

- 1) The Contractor must receive asset and financial accounting records and review reconciliation of assets to records as of the transfer date.
- 2) The Contractor must test conversion of prior valuation and reconciliation of assets to balance before conversion.
- 3) The Contractor must cooperate with an independent accountant selected by the State who will confirm the validity of account balances upon completion of the transition. The transition plan audit will be completed within 120 days after the implementation date.

J. Certification

- 1) The Contractor must provide assurances to the State that implementation will be provided as agreed. Any blackout period must conform to the Sarbanes-Oxley Act for participant notification.



- 2) The Contractor must provide the State with a written certification indicating that the Contractor is able to assume all responsibilities for administering the Plans prior to the effective date of the Contract. This will include verification that all systems and procedures are in place and have been properly tested.

II. Recordkeeping & Administration

A. Participant Level Recordkeeping:

- 1) The Contractor must establish separate accounts for each participant in each Plan. The Contractor must invest all contributions received by wire on a same-day basis in accordance with instructions received from each participant.
- 2) The Contractor must maintain assets in separate sources for reporting purposes and be able to add new sources as needed. Sources for employee contributions must be established for SERS and SPRS in the pre-tax 401(k), Roth 401(k) and 457. Sources for employee contributions must be established for MPSERS and EAA in the pre-tax 457 plan only. Sources for employer contributions must be established for all plans in the 401(k) plan. The required sources include:
 - Employee matched pre-tax contributions in the 401(k) and 457 for all groups.
 - Employee matched Roth contributions in the 401(k) for SERS, SPRS and EAA.
 - Employee matched pre-tax Personal Healthcare Fund (PHF) contributions in the 401(k) and 457 for SERS and SPRS and in the 457 only for MPSERS (not EAA).
 - Employee matched Roth Personal Healthcare Fund (PHF) contributions in the 401(k) for SERS and SPRS only.
 - Employee unmatched pre-tax contributions in the 401(k) and 457 for SERS and SPRS, and in the 457 only for MPSERS and EAA.
 - Employee unmatched Roth contributions in the 401(k) for SERS and SPRS.
 - Employee after-tax (non-Roth) contributions (no ongoing contributions) in the 401(k) and 457 for SERS.
 - Employee over 50 catch-up contributions in the 401(k) and 457 for all groups.
 - Employee traditional catch-up contributions in the 457 only for all groups.
 - Employee unmatched pre-tax contributions in the 401(k) and 457 for SERS and SPRS DB Plan members.
 - Employee unmatched after-tax Roth contributions in the 401(k) for SERS and SPRS DB Plan members.
 - Employer basic contributions 401(k) only for all groups.
 - Employer three percent (3%) matching contributions in the 401(k) for all groups.
 - Employer two percent (2%) PHF matching contributions in the 401(k) for SERS, SPRS and MPSERS.
 - Employer contributions vested upon termination in 401(k) for all groups (if necessary).
 - Employer Lump Sum Match contributions (no ongoing contributions) in the 401(k) for SERS.
 - Employer Banked Leave Time contributions in the 401(k) and 457 for SERS.
 - Rollover from outside plans or IRAs in the 401(k) and 457 for all plans.
 - Plan to Plan transfer of conversion from DB plan balances in the 401(k) for SERS (for both employee and employer contributions).



- 3) The Contractor must maintain individual participant records which must include, but not be limited to, the following fields:
- Full Name
 - Plan Date of Hire
 - Plan Date of Entry
 - Date of Birth
 - Address
 - Beneficiary
 - Hours of Service (for DB and DC for multiple employers)
 - Vested Percentage (need to calculate multiple vesting schedules based on service)
 - Pay data as required (including payroll ID & frequency codes)
 - Deferral elections (\$ and %)
 - Contributions/receipts by source
 - Date of last contribution
 - Contributions year-to-date
 - Disbursements (distributions, withdrawals, transfers, forfeitures, etc.)
 - Balance (totals by fund and by source and overall balance)
 - Department Code (4 digit)
 - Social Security Number
 - Employee Number
 - Current Participant Status code (2 digit code)
 - Participant Status Description
 - Plan Indicator
 - Termination date
 - Termination Reason (2 digit code)
 - Annual Salary
 - Leave Status (MIL, LOA, LAY, etc)
 - Disability
 - Gender
 - Retirement Code
 - Attained Age
 - Advice Account and brokerage account indicators
 - DRO hold indicator
 - Other hold indicators
 - Loan data (date issued, date paid off, status, current balance, payment frequency, etc.)
- 4) The Contractor must be able to handle multiple accounts for one participant. Many participants have more than one account in the Plans (i.e., core account, alternate payee account, beneficiary account, hybrid plan 401k account, hybrid plan 457 account, 401k plan account, 457 plan account, etc). The Contractor must be able to communicate seamlessly to participants with multiple accounts/plans, and participants must be able to interact with all of their accounts seamlessly.
- 5) The Contractor must institute a process to allow the State to verify participant demographic data (ie- status codes, addresses, date of birth, date of hire, hours worked, etc).
- 6) The Contractor must have a process to proactively identify data inconsistencies and discrepancies as defined and agreed upon by the Vendor and ORS, and must resolve them when discovered.



- 7) The Contractor must attempt to update address records for terminated participants whose mail was returned to them. The Contractor must provide the State with a quarterly list of active participants (as defined by the State) for whom the Contractor gets mail returned.
 - 8) The Contractor must manage all aspects of Domestic Relations Orders (EDRO/QDRO)—specific to 401(k) and 457 accounts, including but not limited to:
 - Flag participant account when EDRO/QDRO is received.
 - Place distribution restriction on participant’s account sufficient to preserve alternate payee’s interest until EDRO/QDRO is approved.
 - Approve or reject the EDRO/QDRO.
 - Calculate alternate payee’s share in accordance with EDRO/QDRO.
 - Work with attorneys, alternate payees and other parties as required to complete the EDRO/QDRO.
 - Set up account for alternate payee with account information as set forth in Task 2-A-3 above.
 - Make distributions to alternate payee when requested.
 - 9) The Contractor must have a process to handle beneficiary claims upon the death of a participant:
 - Upon notification of the death of a participant, request a copy of the death certificate and retrieve the latest Designation of Beneficiary record.
 - Send notification to named beneficiary(ies) of account, payout options available, and a Payout Guide upon request from the beneficiary once an account is established.
 - Set up account(s) for beneficiary(ies) with above account information plus information about the deceased participant.
 - Make distributions to beneficiary as requested.
 - Perform semi-annual death audits.
- B. Software & Training
- 1) The Contractor must provide software and training to allow State staff to research all information in participant accounts and to generate reports as needed.
- C. Service Level Agreements
- 1) The Contractor must provide service standards and penalties for the service level agreements in Table I below. The Contractor must agree to abide by these service level agreements, measuring and reporting on them quarterly, and paying any relevant penalties quarterly.



Table I Contractual Metrics that have an associated penalty

RFP Section / Page	Transaction	Service Standard	Penalty for Not Meeting Service Standard
1.022.II.C(1) p. 18-20	Issuance of Participant Statements	Contractor will transmit data to state of Michigan by the 7 th business day following the end of quarter so that statements can be mailed by the 10 th business day following the end of quarter.	\$5,000 per day after 7 th business day following end of quarter
1.022.II.C(1) p. 18-20	Transaction Confirmation Statements	Issued 2 business day after process transaction	\$1,000 for each confirm within the audit sample of 30 selections issued more than 2 business days after processed transactions
1.022.II.C(1) p. 18-20	Plan Sponsor Administrative Reports (Hard Copies)	Delivered 6 weeks after end of quarter.	\$1,000 for each quarterly report that is produced more than 6 weeks after quarter end
1.022.II.C(1) p. 18-20	Processing Payroll Contributions	100% of electronic scheduled payrolls in 2 business days. 100% in 5 business days if manual or un-scheduled electronic.	\$1,000 for each SERS payroll that is received within the current file transmission and posting schedule, and is posted more than two business days after the receipt of both files in good order and ING requested payroll funding \$1,000 for each manual or unscheduled electronic payroll that is posted more than five business days after the receipt of both files in good order and ING requested payroll funding
1.022.II.C(1) p. 18-20	Processing New Loans	Paperless loans 100% same business day. Paper (form) loans 100% in 2 business days.	\$1,000 for each instance, if a new paperless loan issued within the audit sample of 30 selections is not processed within the same business day. \$1,000 for each instance, if a new paper (form) loan issued within the audit sample of 30 selections is processed more than 2 business days after receipt of all required and accurate documentation
1.022.II.C(1) p. 18-20	Hardship & Unforeseeable Emergency Withdrawal Requests	Hardship distributions and UEW 100% in 2 business days	\$1,000 for each instance, if a hardship or unforeseeable emergency withdrawal request within the audit sample of 30 selections is processed more than 2 business days after receipt of all required and accurate documentation



RFP Section / Page	Transaction	Service Standard	Penalty for Not Meeting Service Standard
1.022.II.C(1) p. 18-20	Termination/Rollovers/Direct Transfers for Distribution	Paperless distributions 100% same business day. Paper (form) distributions 100% in 2 business days.	\$1,000 for each instance, if a new paperless distribution within the audit sample of 30 selections is not processed within the same business day. \$1,000 for each instance, if a new paper (form) distribution within the audit sample of 30 selections is processed more than 2 business days after receipt of all required and accurate documentation
1.022.II.C(1) p. 18-20	Fund Balance Transfers	Paperless fund transfers 100% same business day	\$1,000 for each instance, if any fund balance transfers within the audit sample of 30 selections are processed 1 or more business days after 3:59:59 pm EST
1.022.II.C(1) p. 18-20	Investment Election Requests	Paperless investment election requests 100% same business day	\$1,000 for each instance, if any investment election requests within the audit sample of 30 selections are processed 1 or more business days after 3:59:59 pm EST
1.022.II.C(1) p. 18-20	Contribution Percentage Elections/Changes	Paperless contribution %, changes 100% same business day. Paper enrollments 100% in 2 business days.	\$1,000 for each instance, if a new paperless contribution percentage election/change within the audit sample of 30 selections is not processed within the same business day. \$1,000 for each instance, if a new paper (form) contribution percentage election/change within the audit sample of 30 selections is processed more than 2 business days after receipt of all required and accurate documentation
1.022.II.C(1) p. 18-20	QDRO Processing	100% in 5 business days.	\$1,000 for each instance, if any QDRO transfers within the audit sample of 30 selections are processed more than 5 business days after receipt of all required and accurate instructions
1.022.II.C(1) p. 18-20	Average speed of answer	We agree to a 30 second Quarterly ASA.	\$1,000 if Average Speed of Answer for the quarter exceeds 30 seconds. Exceptions to be considered if there are State-driven initiatives that drive unanticipated call volumes
1.022.II.C(1) p. 18-20	First call resolution	95% of all calls into the toll-free number	\$1,000 for the quarter if more than 5% of all calls into the toll-free number for the quarter are not resolved on that call.
1.022.II.C(1) p. 18-20	Call abort rate	3% or less	\$1,000 if average abort rate for the quarter exceeds 3%. Exceptions to be considered if there are State-driven initiatives that drive unanticipated call volumes
1.022.IV.H (1) p. 93	Participant Satisfaction Survey	Achieve a rating of at least 90% for ING Services (excluding those who select Neither/Neutral/Undecided)	\$50,000 per year



RFP Section / Page	Transaction	Service Standard	Penalty for Not Meeting Service Standard
1.022.I.J(2) p. 9	Implementation	Deliver new services or features included in our proposal in time for the new contract period.	\$10,000 based on agreed upon scope and timing

Notes:

- For the purposes of the Service Standards listed above, all business days end at 3:59:59 pm Eastern Time
- Audit selections will include 30 randomly select samples from each transaction type, except where there are less than 30 of a given transaction selected, in which case all transactions will be reviewed
- Quarterly penalties will be capped at \$20,000 per quarter

Table 2 Contractual Metrics that do not have an associated penalty

RFP Section / Page	T	Transaction	Service Standard	Penalty for Not Meeting Service Standards	Service
1.022.II.D(3) p. 21		Monthly Investment Reconciliation	Provide a copy of the monthly financial reports and reconciliation summary to the State within 10 business days of receipt of all required Trust data from State Street.	n/a	
1.022.II.D (11) p. 22		Pending Contribution Items	Research and resolve suspended items within ING's control within 10 business days	n/a	
1.022.II.F(5) p. 24		New Enrollment Material	Mail enrollment materials to all new employees within two business days of receipt of hire and demographic information	n/a	
1.022.II.G (1) p. 25		Check payments	Checks are mailed directly to the participant's address of record within two business days of the transaction being processed	n/a	
1.022.II.I(5) p. 28		Loan Default Warning Notices	Send warning notices at 30 and 60 days and a default notice at 90 days (exceptions apply for military personnel) if payment is not received for a loan	n/a	
1.022.II.N(1) p. 36		Unvested Balance Forfeitures	Move all unvested balances to the forfeiture account upon notification of termination of employment, but no sooner than 30 days after termination of employment	n/a	
1.022.II.N(3) p. 36		Small Balance Payouts	Distribute the balance of the account to the participant as a lump sum distribution 120 days after termination if the total vested market value of the account is less than the amount defined in the plan document	n/a	
1.022.II.Q (4) p. 44		Error Notification	Contractor must provide a written summary of any error corrections to participants within 10 business days after the correction of the error	n/a	
1.022.V.A (4) p. 60		Confirmations	Written confirmations are sent on all transactions and mailed directly to the participant's address of record within two business days following the transaction date	n/a	
1.022.V.A (6) p. 61		Complaints	Respond to participant questions and complaints in a timely manner. Any complaints not resolved within 30 calendar days must be brought to the attention of the State	n/a	
1.022.V.D (2) p. 69		Website Corrections	Correct website text within one to two business days Correct content in the form of documents within three business days	n/a	
1.042(1) Tab 5 p. 2		Quarterly Report	The Contractor must produce quarterly reports on all statistics and service levels in each Plan within six weeks of quarter end	n/a	



1.042(2) Tab 5 p. 2	Annual Report	The Contractor must produce an annual report of each Plan that will be posted on the participant website maintained by the Contractor no later than 30 days after the end of each calendar year	n/a
1.042(3) Tab 5 p. 2	GAAP Reports	The Contractor must provide all reports and information necessary to be able to account for the Plans in accordance with generally acceptable accounting principles and any Plan Sponsor requests	n/a
1.042(4) Tab 5 p. 2	Monthly Market Value Report	The Contractor must provide a monthly market value report, which must be available to the State within 10 business days after each month end	n/a
1.042(5) Tab 5 p. 2	Quarterly Fee Report	The Contractor must provide a quarterly fee report that breaks down what fees are paid to whom and for what. This is broken down by Plan	n/a
1.042(6) Tab 5 p. 2	Investment Transfer Report	The Contractor must provide a report of the amount of transfers between investment options to the State monthly	n/a
1.042(7) Tab 5 p. 2	Monthly Death Report	The Contractor must provide the State with a monthly death report	n/a
1.042(8) Tab 5 p. 2	Annual RMD Report	The Contractor must provide a summary report to the State annually of required minimum distributions made	n/a
1.042(9) Tab 5 p. 2	Monthly Loan Report	The Contractor must send monthly reports to the State reflecting all loan activity, including but not limited to, loan inceptions, loan defaults, outstanding balances, etc. for that month	n/a
1.042(10) Tab 5 p. 2	Third Party Reports	The Contractor must provide participant information to interested third parties upon direction by the State	n/a
1.042(11) Tab 5 p. 3	Ad-hoc Reports	The Contractor must provide additional special purpose and ad-hoc reports as required by the State. The Contractor must maintain these reports if requested by the State. The State must be able to access these reports online	n/a
1.042(12) Tab 5 p. 3	Weekly Deferral Report	The Contractor must provide a weekly report of participant deferral changes and participants who have reached contribution limits for MPSERS and EAA. The report must include, but not be limited to; plan number, participant number, participant name, report unit, effective date, pretax deferral rate, pre-tax deferral amount, IRS limit, and suspension date	n/a
1.042(13) Tab 5 p. 3	Quarterly Investment Report	The Contractor must prepare regular quarterly investment fund analytic reports as of each calendar quarter. These reports must be received by the State no later than five weeks after quarter.	n/a
1.062 Price Proposal Tab 2 p. 1	Price Terms	If at any time during the term of this Contract, the Contractor implements or provides for any other client of comparable or smaller size pricing terms more favorable than the aggregate pricing terms to the State, then the Contractor must offer such pricing terms to the State within 30 days of implementing or providing such terms to another party.	n/a



D. Plan Accounting

- 1) The Contractor must maintain a general ledger.
- 2) The Contractor must set up, on the State's behalf, all investment accounts and contracts, subject to State approval.
- 3) The Contractor must reconcile investment accounts for each Plan with investment providers monthly and provide a copy of the monthly financial reports and reconciliation summary to the State within 10 business days of month end. The monthly financial report reconciliation summary for each Plan must be in a form acceptable to the State.
- 4) The Contractor must reconcile individual participant accounts to the general ledger account balances monthly.
- 5) The Contractor must strictly adhere to the specific input requirements of the State when transmitting the information to the State system to initiate or otherwise change participant deductions related to the plans.
- 6) The Contractor must compute the amount of transfers between investment options, adjust the amounts allocated to each investment option, and report this information to the State monthly.
- 7) The Contractor must process employee and employer contributions and allocation information and wire transfers from the State's custodial account to the investment providers. All exceptions should be flagged and brought to the attention of the State.
- 8) The Contractor must establish the following types of accounts within each plan:
 - i. A forfeiture account for non-vested employer contributions and other assets as directed by the State.
 - ii. Revenue sharing account.
 - iii. Stale Dated Check Account.
 - iv. Others as needed.
- 9) The Contractor must develop and implement procedures for dealing with situations where the payroll feeds cannot provide accurate, timely or complete data.
- 10) The Contractor must allocate the requested amounts to the individual participant accounts on the same day it receives the funding it had requested from the State, provided that funding is received by 4:00 pm EST. This funding is requested by the Contractor after they have reconciled the payroll file received. These payroll files are transmitted to the Contractor electronically. For each failure to meet a posting deadline, unless due to a failure beyond the Contractors control, the Contractor must make participant accounts whole for the delay by posting the files as of the date the noted funding was received.
- 11) The Contractor must suspend items when an employee or employer contribution is made and, due to the lack of sufficient information or other causes, it is unclear how it should be processed. The Contractor must maintain a subsidiary record of all suspended items and research and resolve them within 10 business days. The State will provide assistance as necessary to resolve suspended items.
- 12) In the event there is a change in investment value including interest between the time the suspended item should have been invested and the time it is ultimately invested, if the investment value has increased and if the Contractor caused the



suspended item to occur, the Contractor must contribute the difference between the initial contribution and the price of the investment when it is actually purchased. In the event the investment value has gone down, the entire initial contribution will be utilized to purchase the investment at its current price so that there is no gain or loss to the Contractor. The Contractor must notify the State when this occurs and upon request of the State must produce report reflecting all unpaid and uncleared transactions with corresponding occurrence dates.

E. Procedures Manuals –

- 1) The Contractor must prepare and maintain a customized manual of administrative policies and procedures governing all aspects of the Plans and provide copies to the State for approval. The final approved manual shall be available prior to the targeted transition date.

F. Enrollment of New Employees –

- 1) All State, Public School and EAA employees are eligible to participate in both the 401(k) and 457 Plans upon hire. (Currently, Public School employees hired before 7/1/2010 may not contribute to the 457 plan, but the State plans to make this option available in the near future.) The Contractor must auto-enroll all new State, State Police and Public School employees in the 401(k) and 457 plans to the percentage that maximizes matching from the State as required by State statute (see Attachment C, Plan Sources). All employees may begin contributing to the 401(k) and/or 457 Plans as soon as administratively feasible, and they will receive the respective employer match for retirement and retiree healthcare (if applicable) each pay after an election is made.
- 2) The Contractor must be able to apply match contributions to the 401(k) Plan based on employee elective deferrals in the pre-tax 401(k), Roth 401(k), 457, or across a combination of plans.
- 3) Contributions will be sent to the Contractor by wire every other Thursday, the week after the end of each pay period. Detailed breakdown of each payroll wire will be sent electronically to the Contractor at least two days before the wire.
- 4) The Contractor must mail enrollment materials to all new employees within two business days of receipt of hire and demographic information.

G. Payments to Participants

- 1) The Contractor must be able to make payments to participants (for benefit distributions, loans, hardship withdrawals, unforeseen emergency withdrawals, required minimum distributions, etc.) via check or electronic funds transfer as requested by the participant.

H. Unclaimed Property

- 1) The Contractor must make multiple attempts to locate individuals with unclaimed property (e.g. stale dated checks, dormant accounts, etc.). Once it has been determined an individual cannot be located, the Contractor is required to resolve the unclaimed property in accordance with the plan's administrative policies and procedures and in compliance with any federal and State laws.

I. Loan Administration –

The Loan Policy Statement can be found on the website at <http://stateofmi.ingplan.com> (under Publications). Currently only the 401(k) Plan allows loans. The State may decide to initiate a loan program in the 457 Plan in the future.



- 1) The Contractor is responsible for loan approval and processing, and for keeping track of loan defaults for the Plans.
- 2) The Contractor must make the loan application process available online and through the automated and manual phone systems. Loan payments must be made within two business days of receipt of a completed application.
- 3) The Contractor must be able to provide loan modeling and generate the loan application, promissory note and truth in lending disclosure forms.
- 4) The Contractor must be able to accommodate the direct payment of loans through ACH, payroll deduction or personal checks.
- 5) The Contractor must send warning notices at 30 and 60 days and a default notice at 90 days (exceptions apply for military personnel) if payment is not received for a loan.
- 6) The Contractor must be able to re-amortize loans in the event payments are restarted prior to default.
- 7) The Contractor must be able to make alternative payment arrangements for participants, and accept payments directly from participants, who are on leave of absence or layoff or upon termination.

J. Hardship/Unforeseeable Emergency Distributions –

- 1) The Contractor must review all applications for both the 457 and 401(k) Plans and approve or reject requests for distributions according to each Plan's provisions and policies/procedures established by the State and federal laws.
- 2) The Contractor must make approved payments within three business days of receipt of complete application.

K. Benefit Distributions

- 1) The Contractor must issue distributions in the form of systematic payments (i.e. monthly, quarterly or annual payments) as determined by the participant, lump sum distributions, rollovers or transfers. The Contractor must make these payments upon request by the participant but no less than 30 days after termination of employment.
- 2) The Contractor must make payment for lump sum payments and rollovers within five business days after receipt of completed distribution forms.
- 3) The Contractor must allow participants to make elections regarding whether distributions come from the 401(k) or 457 plans, Roth or non-Roth sources, as well as from specific funds(s).

L. Annuity Distributions

- 1) The Contractor must administer an independent, out-of-plan annuity purchase program. The program must provide multiple price estimates to the customers at institutional rates.
- 2) The Contractor must facilitate the transfer of a participant's plan assets to the annuity provider for the purchase of an annuity under this program.



M. Required Minimum Distributions (RMD)

- 1) The Contractor is responsible for the calculation, notification, and distribution of RMDs.

N. Accounts for terminated participants

- 1) The Contractor must move all unvested balances to the forfeiture account upon notification of termination of employment, but no sooner than 30 days after termination of employment.
- 2) The Contractor must move vested balances (50%, 75%, or 100%) remaining in participant accounts after the forfeiture sweep to a 100% vested source.
- 3) The Contractor must distribute the balance of the account to the participant as a lump sum distribution 120 days after termination if the total vested market value of the account is less than the amount defined in the plan document, currently \$500.
- 4) If participants contact the Contractor regarding full rollovers out of the plan upon termination of employment, The Contractor must educate participants on their ability to leave assets in the Plans and the benefits of doing so.

O. Maintain Beneficiary Information –

- 1) The Contractor must take charge of all historic beneficiary information, some in hard copy, some on microfiche and some in electronic format.
- 2) The Contractor must be responsible for collecting and updating all beneficiary data. All new beneficiary information must be kept in both electronic and paper form according to retention schedules outlined in this Contract and will be processed within five business days of receipt.

P. Payroll interface

- 1) The Contractor must process payroll information according to the business rules below, or as otherwise established by the State.

Current Payroll interface:

1. The State central payroll is run bi-weekly with Sunday as Day 1 of each pay period and Day 12 is the pay date. On Day 10, the State sends the Contractor the detailed payroll withholding information. On Day 12, the State wires the funds to the Contractor/Custodian and the funds are credited to the participant accounts and invested at the close of business that day. Employee demographic changes are sent to the Contractor on Days 5 and 10. The Contractor sends the State deferral rate changes on Day 9 for the State to update deferrals for the following payroll period.
2. The State's Human Resources system provides a 2-digit retirement code to identify each participant's plan eligibility, a 4-digit benefit codes for each contribution type, and 4-digit deduction codes for each benefit plan/contribution type and loan payments. The Contractor must structure their recordkeeping system to accept and interpret the State's Human Resources system coding, assign auto-enrollment deferral rates, apply contribution types to the appropriate sources, and accurately allocate participant contributions.



3. For MPSERS, demographic files are transmitted to the Contractor daily before 6:00 am Eastern Time (ET). The Contractor identifies exceptions and works with the Administrator to resolve, then the Contractor submits a funding requests. Two days after the demographic file was transmitted, and once the wired funds are received, the Contractor posts financials to the participant's accounts. Each Monday by 4:00pm ET, the Contractor transmits a feedback report containing participant election changes.
4. For the EAA, demographic and financial information are manually transmitted to the Contractor on a monthly basis. The Contractor identifies exceptions and works with the administrator to resolve them, and then the Contractor submits funding requests. The Contractor posts financial transactions to participants' accounts. Each Monday by 4:00 pm Eastern Time, the Contractor transmits a feedback report containing participant election changes or contribution limits reached.
5. State non-central payrolls are submitted directly by each of three Non-Central Agencies (NCAs) via spreadsheet and wire payment. The Michigan Probate Courts and Mackinac Island State Park Commission (MISPC) run payrolls bi-weekly consistent with central payroll pay periods. The Business Enterprise Program (BEP) processes and submits retirement plan contributions on a monthly basis.

2) The Contractor must not require the State to make changes to its current payroll system to accommodate the Contractor's internal system requirements.

3) The Contractor must accommodate any changes the State makes to the State's payroll system.

4) The Contractor must accommodate manual payroll files for non-central payroll participants as well as other manual edits, adjustments, and indicative changes to the contribution input file.

5) The Contractor must have an administrative process for correcting payroll data and performing edits on incomplete or missing data.

6) The Contractor must have recordkeeping/administrative capabilities for handling negative data from the payroll files (i.e., negative compensation and contributions) and performing adjustments.

7) The Contractor must validate whether the percentage figure (or flat dollar amount as applicable) provided in the demographic file sent by the State for each source matches the allocation that Contractor has on record.

8) The Contractor must process payroll files on the day received via the State's secure Data Exchange Gateway (DEG) and notify the State immediately if payroll files are not received when expected.

Q. Errors and Omissions

- 1) The Contractor must be responsible for funding participant losses, regardless of materiality, resulting from errors caused by the Contractor.
- 2) The Contractor must provide resolution of errors and omissions during enrollment and ongoing plan administration.



- 3) The Contractor must correct and process an error committed by the Contractor through the VRS, Representative, web site or in regular processing as of the effective date of the original transaction.
- 4) The Contractor must provide a written summary of the correction to the participant within 10 business days after the correction of the error.

R. On-going Training

- 1) The Contractor must provide qualified personnel to conduct training sessions for State staff on the Contractor's processing systems and methodologies and other plan administration topics as requested by the State. The Contractor will also provide CSA's with HIPAA training annually.

S. Documentation and Retention

- 1) The Contractor must maintain all documents submitted throughout its term in both electronic and hard copy formats. These documents must be readily available and provided as needed in a timely manner. Such documents include beneficiary designations, applications for financial hardship and other distributions, power of attorney, etc.
- 2) The Contractor must image hard copy items upon receipt, and Contractor will maintain the hard copy for two years from the date of imaging. Electronic format items must remain available for an unlimited time.

T. Growth of the Plan

- 1) The Contractor must accommodate the growth of the Plans through the addition of new participant groups or new benefit types in the event that this occurs through legislative or administrative action.

III. Compliance

A. Monitor all IRS limits related to 401(k) and 457 plans, including but not limited to 402(g) limits and 415 limits, and calculate catch-up contributions.

- 1) Contractor must monitor and ensure compliance with limits.
- 2) Contractor must notify the State when limits have been exceeded.
- 3) Contractor must notify participants not eligible for employer matching contributions when they reach the maximum limit in a plan and notify them of their options for continuing contributions.
- 4) Contractor must monitor contributions from participants eligible for employer matching contributions monthly to insure that they do not reach the limit too soon in the year, resulting in missed employer matching contributions. If a participant is at risk of reaching limits before the end of the calendar year, the Contractor will communicate the impact of this to them.
- 5) The Contractor must inform participants who are eligible for matching contributions who are making a change to their contributions of the detrimental impact of the change, if it will result in the elimination or reduction of the amount of employer matching contributions that they will receive.
- 6) The Contractor must monitor catch-up provisions including the over 50 catch-up and traditional 457 catch-up.



- B. Tax Reporting and Withholding
 - 1) The Contractor is responsible for mandatory federal income tax withholding and State income tax withholding from distributions.
 - 2) The Contractor must handle participant 1099 forms and related federal and State tax filings after year end.
 - 3) The Contractor is solely responsible for any tax penalties and/or interest that may arise due to errors it made in tax reporting or forwarding of funds to the appropriate government authorities.
- C. Market Timing/Trading Restrictions
 - 1) The Contractor must comply with all federal and State regulations regarding trading.
- D. Audits
 - 1) The Contractor is responsible for providing assistance and data responsive to all auditor requests in a timeline established by the auditor and the State.
- E. Internal Controls
 - 1) The Contractor must put in place internal controls in keeping with industry best practices.
 - 2) The Contractor must provide the State with a copy of Contractor's SSAE16 report on an annual basis.
 - 3) The Contractor must correct any poor performance indicated on the SSAE 16 as required by the State.
- F. Regulatory Monitoring and Compliance
 - 1) The Contractor must comply with the plan document, the plan's administrative policies and procedures, state and federal laws, and all applicable rules and regulations regarding qualified retirement plans.
 - 2) The Contractor must ensure that each participant's account complies with the applicable plan provisions and federal regulations and that all forms and authorizations are complete and on file.
 - 3) The Contractor must proactively monitor and communicate to the State potential and enacted changes to federal laws and regulations that may have an impact upon the recordkeeping and administration requirements of the Plans.
 - 4) The Contractor must also provide legislative updates, regulatory updates, industry trends and analysis, technology enhancements, etc.
 - 5) The Contractor must comply with participant and Plan Sponsor fee disclosure requirements unless directed otherwise by the State.
 - 6) The Contractor must assume that the State wants to comply with applicable federal regulations unless otherwise directed.



G. Fiduciary Responsibilities

1) The vast majority of recordkeeping services the Contractor provides to the State are considered to be ministerial tasks that do not involve discretion by the Contractor. In its role as record-keeper, however, the Contractor does accept fiduciary responsibility to the extent that it has exercised discretion. The Contractor accepts responsibility for making determinations with respect to the availability of hardship distributions and loans, in accordance with plan sponsor guidelines and direction. Although these services are performed based upon plan sponsor direction and are not discretionary in nature, the Contractor accepts responsibility for administering these plan provisions with skill and prudence and without error. Accordingly, the Contractor agrees to indemnify the Plan, Plan Sponsor and its officers, directors and employees for the Contractor's errors or negligence in performing such non-discretionary services. With respect to those responsibilities which are discretionary and are recognized in the industry to create a fiduciary relationship, the Contractor recognizes and accepts that it plays a fiduciary role to the plan. These specific services that involve discretion are:

- Providing full discretionary qualification services for QDRO's and determining whether a court order is consistent with Plan provisions and Internal Revenue Code guidelines.
- Providing investment advice to participants, through the Contractor.

H. Continuing Education

1) The Contractor must sponsor the State's participation at conferences, seminars, etc., including, but not limited to, the annual conference presented by the National Association of Governmental Defined Contribution Administrators. Sponsorship must include the cost of registration, materials, travel, food and per diem expenses for up to two State staff per event, not to exceed three events per year.

IV. Custodial and Trustee Services

A. The Contractor must provide custodian/trustee services to the State.

B. The Contractor must provide trust statements at a frequency and content agreed upon with the State.

C. Reconciliation

1) The Contractor must reconcile plan activities between trust system and recordkeeping system.

D. Asset Valuation

1) The Contractor must value assets, with the exception of the stable value fund, at their net asset value as of the close of each business day.

2) The Contractor must value the stable value fund at book value unless otherwise required by generally accepted accounting principles.

3) The Contractor must account for interest in the stable value fund, which is a separate account owned by the State, on a daily effective method in accordance with the stable value fund investment guidelines (see Attachment D, Stable Value Investment Guidelines).

E. Trade Settlement

1) The Contractor is responsible for all settlements among the investment providers due to changes in participant directed investments.



V. Customer service

A. General Customer Service Requirements

- 1) The Contractor must maintain an adequate number of staff to provide the required information and services directly to participants.
- 2) The Contractor must be able to answer by phone, writing, or in person, all participant questions about the Plans' features and options and retiree health care, life insurance, and disability benefits.
- 3) The Contractor must ensure that all Plan information on all channels reflects participant changes as requested, regardless of medium used, by the next closing of the market.
- 4) The Contractor must provide participants using the VRS, customer service representatives or the website with a transaction confirmation, including a confirmation number, within five business days.
- 5) The Contractor must offer participants a choice between receiving confirmations and other plan notifications (e.g., statements) in written form mailed to the address on file or through a secure electronic method. The State does not consider email a secure electronic method.
- 6) The Contractor must respond to participant questions and complaints in a timely manner. Any complaints not resolved within 30 calendar days must be brought to the attention of the State.

B. Voice Response System (VRS)

- 1) The Contractor must provide a user-friendly automated system with a toll-free access number. The system must have a customized menu of items available by touch-tone phone, with information updated daily.
- 2) The Contractor's VRS must also include easy access to speak to a representative and a TDD/TTY line.
- 3) The State wishes to preserve the current menu structure. The Contractor must ensure that for each Plan, the VRS must include:
 - I. Up front news alerts.
 - II. Total account balance with a breakdown by investment options valued at the prior day's closing values.
 - III. Unit values or share prices at the prior day's closing values.
 - IV. Current deferral election and ability to change deferrals daily.
 - V. Asset allocation for current deferrals and ability to change daily.
 - VI. Asset allocation for current balances and ability to change daily.
 - VII. Transfer between investment options daily.
 - VIII. Forms and documents mailed to address of record.
 - IX. Information about hardship withdrawals/unforeseeable emergency withdrawals.
 - X. Loan amount available and initiate plan loans.
 - XI. Provide current interest rate on loans.
 - XII. Change PIN number.
 - XIII. Request Self-Directed Brokerage Account information and speak with a Brokerage Representative.



- XIV. Easy access to Customer Service Representative or Advisor Service Representative.
- XV. Ability to switch easily between Plans.
- XVI. Request forms or advice on rolling assets into the plan.
- XVII. Provide a phone number and instructions on how to access a demonstration of your automated VRS capabilities for the participant.

C. Contact Center

- 1) The Contractor must have a contact center with trained representatives available at least from 8:00 am to 8:00 pm Eastern Standard Time each business day.
- 2) The Contractor's contact center representatives must be prepared to address the following issues:
 - i. Authenticate callers as the account holder; preserve confidentiality at all times.
 - ii. Handle all requests that also could be done by the VRS or the website.
 - iii. Review and explain investment alternatives and past investment returns.
 - iv. Explain all Plan provisions. Understand what federal law allows compared to actual Plan provisions.
 - v. Understand general concepts of deferred compensation plans and investments.
 - vi. Provide multi-lingual representatives when needed.
 - vii. Enroll new participants with or without a PIN.
 - viii. Provide assistance to participants during an Internet session.
 - ix. Monitor and record all participants' calls with a customer service representative.
 - x. Explain all retirement benefits for Plan participants as it pertains to the State of Michigan's retiree health care, life insurance, and disability benefits.
 - xi. Explain all available termination distribution options to participants and indicate the benefits associated with maintaining a retirement account with the State.
 - xii. Explain the federal tax consequences of increasing or decreasing a deferral amount.

D. Interactive Website

- 1) The Contractor must make the website available 24 hours a day, 7 days a week, with minimal down time for routine maintenance.
- 2) The Contractor must be proactive in updating and maintaining the website with regulatory, legislative, or plan administrative changes. If it is discovered that the website contains an error, the Contractor must correct this error within one to two business days of becoming aware of it, or three business days if the correction pertains to forms or documents.
- 3) The Contractor must customize the website to fit the unique Plan structure and options of the State.
- 4) The Contractor must ensure that the website is user friendly.
- 5) The Contractor must offer the capability to allow employees to take an online tutorial of the website.



- 6) The Contractor must offer participants the ability to download participant account information for use with other software programs (i.e. Microsoft Money, Microsoft Excel, Quicken, etc.).
- 7) The Contractor must ensure that account-specific information is only accessible with a username and password and that general plan information is accessible without a username or password.
- 8) The Contractor must update the information on the site at least daily.
- 9) The Contractor must ensure the website includes, at a minimum, the following information and features:
 - i. Current total account balance with a breakdown by investment options and by money source (dollar and percent), and vested balances.
 - ii. Enrollment for new participants.
 - iii. Option for automatic rebalancing.
 - iv. Current investment fund unit values or share prices and cumulative performance up to 10 years.
 - v. Current investment fund summary information and access to prospectus.
 - vi. Fee structure for all services.
 - vii. Current deferral election and ability to change daily.
 - viii. Establish and maintain a deferral rate escalation schedule.
 - ix. Asset allocation for current deferrals and ability to change daily.
 - x. Asset allocation for current balances and ability to change daily.
 - xi. Initiate transfer between investment options daily.
 - xii. Forms, transaction confirmations, documents (including quarterly participant statements), and publications (including newsletters) in printable format.
 - xiii. Amount available, information about and application for hardship (unforeseeable emergency) withdrawals.
 - xiv. Loan amount available, model loans and initiate plan loans other than real estate loans. Status of current loans including; payoff date, scheduled payment amount, and interest rate.
 - xv. Detailed transaction history and pending transactions.
 - xvi. Change account login and PIN numbers.
 - xvii. Request Self-Directed Brokerage Account information and transfer to Brokerage Account online.
 - xviii. Transfer to Advisor Service Online.
 - xix. Switch easily between Plans.
 - xx. Plan information including summaries and the plan documents.
 - xxi. Calculators including projected balances, payout calculations.
 - xxii. Customized, Interactive retirement planning tools.
 - xxiii. Educational information about investments, retirement planning.
 - xxiv. Request certain distributions.
 - xxv. Employment, address and beneficiary information.
 - xxvi. Generate statements and choice of paper or electronic statements.
 - xxvii. Ability to target messages to a specific subset of participants.
 - xxviii. Up-front news alerts.
 - xxix. Glossary of Terms.
 - xxx. TPA contact information.
 - xxxi. Immediate transaction confirmation.
 - xxxii. Ability to access the information listed above via mobile device such as a smartphone or tablet.



- xxxiii. Ability to change plan access for registered electronic devices such as computers, tablets, or smartphones.
- xxxiv. Defined Benefit pension estimate, if provided by the State.

VI. Communication Services

A. Overall Information Coordination

- 1) The Contractor must conduct ongoing review of all publications, manuals, procedures, websites, phone systems, forms, etc. to ensure that information is up to date and consistent.
- 2) The Contractor must secure State approval of all communications before they are released to participants.

B. Annual Communication Plan

- 1) The Contractor must prepare an annual communication plan in consultation with the State no later than January 31 of each new year to promote the State's priorities for each new year.

C. Communication of General Plan Information

- 1) The Contractor must write and design required participant communication materials for the administration of the Plans. Current communication materials can be found on the website at <http://stateofmi.ingplans.com> and mipensionplus.org. The Contractor must produce additional communication materials as needed.
- 2) The Contractor is responsible for communicating information about the retiree health, dental, vision, disability and death benefits to which participants are entitled, in addition to providing information about the 401(k) and 457 Plan benefits.
- 3) The Contractor must make materials available in hard copy and on the website.
- 4) The Contractor must be responsible for branding for all of the Plans in consultation with the State.

D. Targeted Communication Campaigns

- 1) The Contractor must design and execute targeted communication campaigns, including printing and mailing as applicable, as needed to promote various aspects of or changes to the Plans or to encourage specific participant behavior. These campaigns will be conducted as the Contractor recommends and the State approves, and as requested by the State.

Examples would include but not be limited to: "Happy Birthday" letters, communications to newly vested participants, communications to those eligible for catch-up contributions, communications to those not maximizing the match, communications for older participants regarding understanding income in retirement.

- 2) The Contractor must support and maintain social media communications and platforms as needed.

E. Periodic Participant Communications

- 1) The Contractor must create quarterly participant statements and make them available on the website on or before the tenth business day after the end of each calendar quarter. The content and design of the statements must be customizable, must include a section for customized messages from the State, and will be developed in consultation with the State.



- 2) The Contractor must provide quarterly statements to participants in the State Plan via the method designated by the participant on or before the tenth business day after the end of each calendar quarter. The default is sending a printed statement via the mail.
- 3) The Contractor must provide semi-annual statements to participants in the MPERS Pension Plus, SPRS Pension Plus and EAA Plan via the method designated by the participant on or before the tenth business day after the end of each semi-annual period. The default is sending a printed statement via the mail.
- 4) The Contractor must provide electronic notification of the availability of quarterly statements on the website to all participants with an email address on record.
- 5) The Contractor must provide a printed statement via the mail annually to any participant who elects to receive their statements through a secure electronic method, if such participant has not logged into his or her account within the prior 12 months.
- 6) The Contractor must include a quarterly newsletter with participant statements, targeting alternate versions (currently two) of the newsletter to specific groups of participants and Plans. The newsletter must be customized and must include information about plan provisions, new features available, timely reminders, and educational material to increase participation and diversification. Recent newsletters can be found on the website at <http://stateofmi.ingplans.com> and <http://mipensionplus.org>.
- 7) The Contractor must include a market performance report with participant statements. The design and content of the market performance report must be developed in consultation with the State.
- 8) The Contractor must utilize the State of Michigan's Consolidated Print Center for printing of statements and related materials and the State's Mail and Delivery Services must be used for mailing statements and related materials. The Contractor must pay for the services provided by these State agencies.

F. Video Conferencing and Webinar/web-conferencing

- 1) The Contractor must have video conference and Webinar/web-conferencing capabilities for communication with the State and participant education meetings.

G. Participant Educational Services

1) Field Services Staffing

- i. The Contractor must provide on-site staff (hereafter field services representatives) in Lansing in sufficient numbers to execute the tasks required of them under this Contract.
- ii. The Contractor must provide the State with certification once per year that all field services representatives were appropriately licensed (Series 6, 63 and 65 licenses at a minimum) during the preceding calendar year and that field services representatives were not compensated on a commissioned or incentive basis to promote any investment product or services.



2) Educational Seminars

- i. The Contractor must conduct a sufficient number of educational seminars for participants. Sufficient is defined as enough to meet participant demand. These seminars may be conducted in person or by videoconference or webinar. Seminars must provide transition and ongoing education covering features and operations of the Plans and investment concepts. Topics may include, but are not limited to:
 - New Employee seminars (for those seminars offered to State employees, these are offered in partnership with State department HRs).
 - 401(k) and 457 basic plan information.
 - Personal Financial Management Fundamentals.
 - Introduction to Investments.
 - Advanced Investing (including asset allocation).
 - Women in Investing.
 - Pre-retirement seminars.
 - Retiree seminars.
 - Investment Advice.
 - Seminars by Request.

3) One-on-One Counseling

- i. The Contractor must provide one-on-one meetings with participants to discuss plan provisions, investment concepts, retirement planning considerations, and give advice.

4) New Employee Outreach Program

- i. The Contractor must conduct a new employee outreach program for new participants in the plan. As part of this program, Contractor must meet with all new State employees face-to-face within the first four months of employment. This program must also include a one-hour phone conversation with a financial advisor.

5) On-Site Expertise

- i. The Contractor must provide on-site expertise about the plans, systems, reports, etc.

6) Other Support

- i. The Contractor must provide support as needed to the State staff.

H. Annual Participant Satisfaction Survey

- 1) The Contractor must contract with a third party to conduct an annual participant survey. The survey's content and format must be developed in concert with the State. The Contractor must consider using a third party from within the State of Michigan to complete this task.
- 2) The Contractor must take corrective measures or action steps if participant satisfaction scores are not meeting the mutually established participant satisfaction goal.
- 3) The Contractor must pay a financial penalty of \$50,000 if the participant satisfaction goal mutually established with the State is not met as measured by the annual participant survey.



VII. Technology and Systems

A. Backup and Restore

- 1) The Contractor must keep duplicate or back-up computer data files maintained in connection with the plans in a place of safekeeping satisfactory to the State.
- 2) The Contractor must acknowledge that all computer data files of the Plans, as maintained by the Contractor must at all times remain the property of the State notwithstanding the fact that such records may be stored upon or within one or more computer or data retention systems owned, operated or leased by the Contractor.
- 3) The Contractor must provide the State access to all back-up source materials, reports, books, records, computer programs and all other information and documentation relating to each plan, as reasonably required, so that the State and/or its designated officers, agents and accounts, can conduct a financial examination and/or audit of the plans.
- 4) The Contractor must notify the State if any such records are to be maintained upon a computer system or any other data retention system which is not owned by the Contractor. Such arrangements must be satisfactory to the State. If such arrangements exist, the Contractor must provide the State with assurances from the owner of such computer facilities, of continued availability and security of such records at all times.

B. Disaster Recovery

- 1) The Contractor must have a disaster recovery plan in place which meets industry standards.

VIII. Investments and Fees

Background:

The State is seeking a bundled provider to fully support the Plans through this full-service, all-inclusive Contract, offering an investment structure with competitive funds. The fund options may be either in-house or outside alliances, and must offer broad diversification opportunities, excellent returns and competitive expense levels.

The State of Michigan Plans currently offers participants a three Tier investment approach with multiple fund options:

- Tier I: Stable value fund, passively managed funds and target date funds;
- Tier II: Actively managed funds; and
- Tier III: Self-Directed Brokerage Account/Self-Managed Account including individual securities, mutual funds, covered call options and Exchange Traded Funds.

A. Fee Structure

The State currently charges Plan fees in three different structures, depending on participant group. The State is considering moving to a uniform flat fee structure, possibly in conjunction with the implementation of this Contract. Contractors are encouraged to provide recognition that Plan assets are expected to grow by submitting fee proposals in which fees decline as plan assets grow.



1) The Contractor must provide a fee proposal for each structure described below that meets all the criteria outlined, and Contractor must be able to accommodate either structure. Please note, pricing should be submitted separately in the format provided in Attachment A.

i. Current Fee Structure:

a. Investment Management Fee – All participants pay an investment management fee as a percentage of their Plan assets for each fund. This percentage varies by fund.

b. Revenue Sharing for Recordkeeping and Administration – All participants pay a revenue sharing amount as a percentage of their Plan assets for each fund. This percentage also varies by fund. The treatment of the revenue sharing amounts paid varies as follows:

1. For all participants, four basis points are returned to the State to cover the State’s administrative expenses.
2. For State employees, the remainder of the revenue sharing is retained by the Contractor to pay recordkeeping expenses up to the total required revenue. Any additional amount must be returned to the plan for the benefit of participants.
3. For public school employees, the remainder of the revenue sharing paid by that group is rebated to them.
4. For Educational Achievement Authority employees, the remainder of the revenue sharing paid by that group is rebated to them.

c. Per-Participant Flat Fee

1. State employees do not pay a flat fee.
2. Public school employees who have a balance of at least \$12.75 at the end of each quarter pay a flat fee of \$12.75 per quarter.
3. Educational Achievement Authority employees who have a balance of at least \$13.75 at the end of each quarter pay a flat fee of \$13.75 per quarter.

d. Transactional Fees – Currently, participants pay a fee for utilizing the following services: loan origination, Self-Managed Account (SMA) access, professional account management, and overnight check processing, DRO processing. Participants utilizing these transactions must solely bear the fees associated with them. That is, no costs represented by these activities should be offset by other recordkeeping fees.

ii. Uniform Flat Fee Structure

a. Investment Management Fee – All participants pay an investment management fee as a percentage of their Plan assets for each fund. This percentage varies by fund.



- b. Revenue Sharing for Recordkeeping and Administration – No funds will have revenue sharing. If this is not possible, revenue sharing will be at the lowest possible level, and it will be rebated directly and immediately back to the participant to the same degree that it was paid by the participant, to effectuate a net zero impact of revenue sharing for each participant.
 - c. Flat Fee for Recordkeeping and Administration – All participants pay the same single flat fee per participant. A participant will only be charged this fee once per quarter, regardless of the number of accounts the participant has.
 - 1. For all participants, \$4.00 per participant per quarter is returned to the State to cover the State’s administrative expenses.
 - 2. The Contractor will not charge participants the difference if the participants balance does not support payment of the full flat fee.
 - d. Transactional Fees – Participants will pay a fee for utilizing the following services: loan origination, SMA access, professional account management, and overnight check processing, and DRO processing. Participants utilizing these transactions must solely bear the fees associated with them. That is, no costs represented by these activities should be offset by the flat fees.
- iii. Uniform Fee Structure
- a. Investment Management Fee – All participants pay an investment management fee as a percentage of their Plan assets for each fund. This percentage varies by fund.
 - b. Revenue Sharing for Recordkeeping and Administration – No funds will have revenue sharing. If this is not possible, revenue sharing will be at the lowest possible level, and the wrap fee described below will be reduced by an equal amount so that the revenue sharing plus the reduced wrap fee will be equal to the wrap fee charged on other funds. This revenue sharing amount will be used the same way that the wrap fee is used.
 - c. Uniform Fee for Recordkeeping and Administration – All participants pay the same uniform fee for every fund as a percentage of their Plan assets for each fund. The percentage will not vary by fund.
 - 1. Stop limit: Uniform fees charged for a single participant across all plan accounts can only be charged up to plan balances under the stop limit. The Contractor will provide the uniform fee with no stop limit as well as under five possible stop limit combinations. These combinations should include stop limits of \$130,000; \$150,000; \$175,000; \$200,000; and \$250,000 per year.
 - 2. For all participants, 4 basis points are returned to the State to cover the State’s administrative expenses.



- d. Transactional Fees – Participants must pay a fee for utilizing the following services: loan origination, Self-Managed Account (SMA) access, professional account management, and overnight check processing, DRO processing. Participants utilizing these transactions must solely bear the fees associated with them. That is, no costs represented by these activities should be offset by the wrap fees.

B. Provide Tier I and Tier II Fund Options

- 1) The Contractor must present a proposed fund lineup. Contractor's proposed lineup should match the State's existing lineup.
 - i. The Contractor's recommendations must be consistent with the existing three tier structure and fund styles and the Plan's Investment Policy Statement (Attachment B).
 - ii. The Contractor must furnish all the information requested in Tables IV through VIII in the format provided for any funds you recommend.
 - iii. The Contractor must provide the fund's official name (including share class and ticker symbol if applicable) to allow us to obtain additional information on the funds through outside services.
 - iv. The Contractor's proposed funds may include mutual funds, separate accounts and/or commingled funds/collective investment trusts.
 - v. The Contractor must provide the following data for each recommended fund that would be either a new fund or a new share class to the Plans:
 - a. A prospectus and/or fund fact sheet.
 - b. For each fixed-income investment vehicle, provide the average maturity, average duration, average credit quality, average coupon. Also, provide % sector breakdown to Treasury/Agency, corporate, mortgage-related, asset-backed, foreign, cash equivalents, other. Provide % invested in AAA, AA, A, BBB, BB, B, below B and any related limitations or percentages of assets that can be allocated to any one issue or issue class.
 - c. A summary description of the fund's investment philosophy and strategy.
 - d. A biography of the current portfolio manager and how long that person has acted as portfolio manager;
 - e. Quarterly total rate of returns (net of fees). Refer to Table V.
 - f. Expense ratios and benchmarks;
 - vi. The Contractor must recommend funds that allow participants to freely transfer assets between the funds.
- 1) The Contractor must not impose any recordkeeping restrictions that prevent participants from freely transferring assets between any of the funds. Individual investments may have restrictions such as equity wash and holding period requirements.
- 2) The Contractor must work with the State to identify any set minimum investment amount, or any additional fees or expenses, such as front-end load or redemption fees. The Contractor must negotiate on behalf of the State to remove any such restrictions from potential funds where applicable or possible.



- 3) The Contractor must ensure there is no liquidation penalty, contingent deferred sales charges (CDSC), fees or market value adjustment related to the liquidation of any of the Plan's core investment products.
- 4) The Contractor must utilize a fund mapping conversion method with respect to the transfer and consolidation of funds, into any new set of fund options as applicable. Under this approach, all assets in the Plans must be transferred into similar investment options within each asset class of the new investment manager, if applicable.

Existing Fund Lineup

C. Investment Restrictions

- 1) The Contractor must implement investment restrictions, as allowed in this Contract and in the Investment Policy Statement, as directed by investment fund managers.

D. Market Timing Policy

- 1) The Contractor must implement a customized State market timing policy if requested by the State.

E. Investment Option Changes

- 1) The Contractor must implement changes in investment options with 90-day notice from the State.
 - a. Coordinate all necessary documentation and Contracting to implement the change.
 - b. Map money to new investment options as directed by the State.
 - c. Communicate to participants regarding the fund change as directed by the State.

F. Investment Manager Contracts

- 1) The Contractor must Contract with Investment Managers and provide copies of all Contracts to the State.

G. Self-Directed Brokerage Account /Self-Managed Account (SMA) Services

- 1) The Contractor must provide each plan participant with the option to set up an SMA in his or her name.
- 2) The Contractor must provide for the purchase of an extensive selection of securities through the SMA, as agreed by the State.
- 3) The Contractor must Contract with an SMA provider, if necessary.
- 4) The Contractor must provide participants with SMA information and applications.
- 5) The Contractor must provide information about the participant's SMA balance on the participant's Tier I/Tier II quarterly statements.



- 6) The Contractor is responsible for coordinating the transfer of assets back from the SMA provider and directing the transfer to the plan's other options as directed by the participant.
- 7) The Contractor must transfer the SMA assets in-kind during the transition period.
- 8) The Contractor must ensure that the participant may direct the transfer of contributions from the Tier I or Tier II accounts to the SMA on a daily basis, subject to the SMA provider's minimum transfer requirements that must be reinforced by the Contractor.
- 9) The Contractor must deduct any administration fees charged by the Contractor for the SMA from the participant's account.
- 10) The Contractor must ensure that the SMA is administered in the following fashion:
 - a. The SMA provider is responsible for processing the participant's brokerage account enrollment application and notifying the Contractor daily of the accounts opened.
 - b. Participant accounts must be identified by participant name and the unique identification number used by the Contractor. The broker must assign a unique account number.
 - c. The SMA provider must maintain toll-free phone access to a bank of qualified customer service representatives to affect trades and answer questions about the brokerage account services and statements.
 - d. The SMA provider must issue quarterly statements (or monthly if there are any transactions to report) mailed to the participant's address of record with the Contractor.
 - e. The SMA provider must provide all applicable notices, prospectuses, proxies, and corporate action materials relating to any asset held in the Tier III account.
 - f. The SMA provider must provide an aggregate daily asset value of each participant's SMA to the Contractor on a daily basis.
 - g. The SMA provider must maintain a website and all participants who open an SMA must have access to their account information through this web site.
 - h. The SMA provider must be able to implement a minimum balance and/or minimum transfer amount in the SMA if directed by the State.

H. Management of Stable Value Fund

- 1) The Contractor must provide Stable Value Fund that is a separate account owned by the State, managed in accordance with the Investment Policy Statement.
- 2) The Contractor must manage the funds to allow for daily valuation and transactions, with appropriate trading restrictions allowed. (See **Attachment D**)
- 3) The Contractor must transfer the fund's securities in-kind to the new Contractor at the time of transition.



Investment Option: Stable Value Fund
Provisions and Restrictions

(Contractors Stable Value provisions and restrictions)

Plan Sponsor

Plan withdrawals are allowed for the Synthetic GIC. However, withdrawals resulting from employer-initiated events, such as withdrawals following mass layoffs, employer bankruptcy or full or partial plan termination are not always covered by stable value investment contract guarantees and may be restricted or subject to market value adjustment.

Participant

Generally, there are no limitations on contributions to or withdrawals from the Fund as a result of retirement, death, disability, unforeseen hardship, separation from service, or attainment of age 65. Participant transfers between the Fund and funds with similar investment objectives (referred to as competing funds) may be subject to a 90 day “equity wash” provision. Examples of competing funds are Money Market Funds, Short-Term Bond Funds or another investment option within the plan that contains a guarantee of principal. For the current Stable Value Fund, the SSgA Yield Enhanced STIF and Self-Managed Account plan investment options are competing funds.

I. Investment Fund Selection and Performance Measurement and Analytics

- 1) The Contractor must conduct a quarterly review of the funds.
- 2) The Contractor must present the investment performance report referenced in requirement 1.104-II-B-12 at the quarterly 401(k) and 457 Plans Investment Committee meetings.
- 3) The Contractor must provide consulting related to investments as needed by the State for the administration of the Plans.
- 4) The Contractor must conduct fund manager selection studies on behalf of the 401(k) and 457 Plans Investment Committee on an “as needed” basis. These studies must screen a universe of managers who are of the size and management style needed for consideration as a new manager or as a replacement manager. The information presented must be determined in consultation with the 401(k) and 457 Plans Investment Committee. All fund searches will include multiple alternatives and all alternatives will be compared to benchmarks and peer groups where available. Contractor Proprietary products may be introduced but must be presented and evaluated applying the same process as all other alternatives.
- 5) The Contractor must submit certification to the State annually that personnel conducting these tasks are not compensated on a commissioned basis to promote any investment product or services.

J. Investment Advice Services

- 1) The Contractor must make an advisor service available to Plan participants. This service must provide personalized advice – professional, unbiased investment planning, personalized reports and support – to create a savings and investment strategy based on the participant’s personal retirement goals. The following services, at minimum, must be included:



- a. Help with retirement goals.
 - b. Retirement strategies and what-if scenarios.
 - c. Investment recommendations and automated transactions.
 - d. Automatic transfer of account information.
 - e. Ability to include outside investments in advice.
 - f. Periodic review and follow-up.
 - g. Total 401k & 457 account views.
 - h. Personalized reports.
 - i. Periodic account rebalancing.
- 2) The Contractor must give a personalized forecast that details their progress toward reaching their retirement goals. The report is based on participant's personal information, including Plan account balance, information provided on other retirement savings vehicles, pension data, social security estimated benefits, current income, savings, risk tolerance and desired retirement age. The service must also factor in current contribution amounts to further fine tune the advice participants receive.
- 3) The Contractor must allow the participants to access the Advisor Service online without any additional fee to the Plan or the participant for the online access to the service.
- 4) The Contractor must allow participants to opt to talk to a live professional and have their accounts actively managed. This program must provide:
- a. The same personalized, objective investment methodology as the online advisory services, including ongoing management and optimization of their account.
 - b. Quarterly progress reports.
 - c. The option to speak with a qualified investment advisor representative to further tailor advice and savings strategy.
 - d. All participants must be provided a free one-time only financial consultation using the Advisor Service. If there are costs for subsequent usage of this program, they must be charged only to the participants who elect to use it.
- 5) The Contractor must ensure that the provider of the advisor service will:
- a. Be registered as an investment advisor under the Advisors Act.
 - b. Not be subject to any of the disqualifications set forth in section 411 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").
 - c. Acknowledge that the services are in accordance with all federal laws related to such services.
 - d. Acknowledge that they are a fiduciary.
- 6) The Contractor must agree to indemnify the State, per Contract requirements, for the investment advisory services offered either through Contractor's proprietary product or a third party provider.
- 7) The Contractor must ensure that the provider of the advisory service provides the following documents to the Plan Sponsor:



- a. Monthly Usage Report.
 - b. Part II of form ADV Disclosure Statement.
 - c. An Advisor Service fact sheet.
 - d. A report of the overall health of participant investment allocations, contribution and projected retirement income.
- 8) The Contractor must ensure that the provider of the advisor service will design an exit strategy if the State decides to no longer have an advisor service available to plan participants.

IX. Transition Responsibilities Upon Termination

A. Transition Responsibilities

- 1) The Contractor must cooperate with the State and the successor Contractor upon termination or expiration of the agreement, to ensure the successful transfer of administrative responsibilities to the State, its representatives, or successor organization. Such items include, but are not limited to, the following:
 - a. Participant records including all historical data (including participant files from the prior Contractor, hardcopy records including imaged, microfiche, or other format that was utilized for record retention purposes), transactional level detail that took place during the term of the agreement as well as the historical data received from the prior Contractor.
 - b. Participant demographic data including categorization required for compliance with processing and regulatory requirements.
 - c. All other historical files.
 - d. All data residing in all operating systems, including but not limited to, participant level notes/comments.
 - e. All applicable tax documents and participant level withholding data that is deemed by the State to be appropriate.
 - f. Trustee/custodial assets and records in a format that is deemed acceptable by all parties.
 - g. All data and records related to the brokerage option including asset positions, account numbers, and other data fields required by the successor provider to ensure a smooth transfer and/or re-title of accounts/assets.
 - h. Details of any sub-contracted procedures or third party agreements'.
 - i. An up-to-date copy of policies and procedures for plan operation and administration.
- 2) The Contractor must provide any requested reports related to the termination or transfer of this Contract in a timely fashion, no later than 60 days after the expiration or termination of the Contract.
- 3) The Contractor must provide staff to work with the State and/or the successor Contractor to answer questions and provide technical assistance during the transition period and up to six months afterward as needed to complete the transition.
- 4) The Contractor must continue to provide services to and work with the State and its representatives to assist in problem resolution and other areas as deemed necessary.



- 5) The Contractor must fully cooperate with post conversion audit activity conducted by the State or its designee.
- 6) The Contractor must ensure the availability of staff and records required to provide technical assistance to allow for the timely completion of the annual financial audit of the latest Plan year.
- 7) The Contractor must have no written or telephone contact with participants as of a date determined by the State.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The following positions must be designated as Key Personnel:

- Client Relationship Director: The Contractor has assigned Brian Merrick as the Client Relationship Director. Client Relationship Director must serve as an escalation point beyond the Client Relationship Manager, if needed, and must work to ensure that the Client Relationship Manager has the support he/she needs within the organization to accomplish the goals of the State.

Brian Merrick – Client Relationship Director
Phone: (781) 796-9268
Email: brian.merrick@us.ing.com

- Client Relationship Manager: The Contractor has assigned Adria Campbell as the dedicated Client Relationship Manager to work solely with the State of Michigan Plans. Client Relationship Manager must be the primary contact person for State personnel. Client Relationship Manager must serve as the single point of accountability for all projects initiated between the Contractor and the State. Client Relationship Manager must have the authority to make day-to-day decisions regarding service issues and must have the ability within the Contractor's organization to obtain the use of Contractor's resources, both direct and indirect, as are necessary.

Adria Campbell – Client Relationship Manager
Phone: (781) 796-9286
Email: adria.campbell@us.ing.com

- Communications Project Manager: The Contractor has assigned Kristine Matthews as the dedicated Communications Project Manager for the coordination of the tasks in section 1.022-VI of this Contract, with the exception of subsection G of that section. The Communications Project Manager must ensure that all communications to participants, including web, printed materials and ad hoc publications, are completed in an accurate and timely manner.

Kristine Matthews - Communications Project Manager
Phone: (781) 796-9802
Email: kristine.matthews@us.ing.com

- Field Service Manager and Field Service Representatives: The Contractor has assigned Heidi Schiller as the dedicated Field Services Manager and Janet Hile, Eddie Carrington, Kathy Van Fossen, Kelly Taylor and Colleen Beaumont as dedicated Field Services Representatives for the completion of the tasks in section 1.104-VI-G of this Contract.

Heidi Schiller - Field Service Manager
Phone: (517) 636-6070
Email: heidi.schiller@us.ing.com



- Conversion Project Manager: The Contractor has assigned Maggie Shen as the Conversion Project Manager to ensure a smooth conversion to the new Contract under section 1.104-I of this Contract.

Maggie Shen - Conversion Project Manager

Phone: (781) 796-9283

Email: maggie.shen@us.ing.com

- Additional staff may be needed to carry out all of the responsibilities detailed within this Contract.
- Additional staff may be assigned as needed to meet the needs of the participants and the State.

The State will oversee the Contract. The Director of Plan Development and Compliance must be the primary person working with the Contractor's Relationship Manager and overseeing the Contract terms. Additional staff in the State will be assigned to support the Director of Plan Development and Compliance.

1.040 Project Plan

1.041 Project Plan Management

Issue Management

Risks are items that have the potential to cause problems if they are not addressed. Issues are those things that endanger the project. The Contractor must capture and report risks and issues. Risks must include an assessment of potential impact and a mitigation strategy. Issues must be prioritized based on impact, which may include impact to participants, age, severity, budget impact, etc.

1.042 Reports

The formats of all reports are subject to State approval. All reports must be customizable and available on-line.

1. The Contractor must produce quarterly reports on all statistics and service levels in each Plan within six weeks of quarter end (see example at Exhibit II). Please provide a sample copy of all reports.
2. The Contractor must produce an annual report of each Plan that will be posted on the participant website maintained by the Contractor no later than 30 days after the end of each calendar year.
3. The Contractor must provide all reports and information necessary to be able to account for the Plans in accordance with generally acceptable accounting principles and any Plan Sponsor requests.
4. The Contractor must provide a monthly market value report must be available to the State within 10 business days after each month end (see example at Exhibit III).
5. The Contractor must provide a quarterly fee report that breaks down what fees are paid to whom and for what. This is broken down by Plan (see example at Exhibit IV).
6. The Contractor must provide a report of the amount of transfers between investment options to the State monthly.
7. The Contractor must provide the State with a monthly death report.
8. The Contractor must provide a summary report to the State annually of required minimum distributions made.
9. The Contractor must send monthly reports to the State reflecting all loan activity, including but not limited to, loan inceptions, loan defaults, outstanding balances, etc. for that month.
10. The Contractor must provide participant information to interested third parties upon direction by the State.



11. The Contractor must provide additional special purpose and ad-hoc reports as required by the State. The Contractor must maintain these reports if requested by the State. The State must be able to access these reports online.
12. The Contractor must provide a weekly report of participant deferral changes and participants who have reached contribution limits for MPSERS and EAA. The report must include, but not be limited to; plan number, participant number, participant name, report unit, effective date, pretax deferral rate, pre-tax deferral amount, IRS limit, and suspension date.
13. The Contractor must prepare regular quarterly investment fund analytic reports as of each calendar quarter. These reports must be received by the State no later than five weeks after quarter. Each report must include a minimum of the following for all funds:
 - A. Plan Overview – Investment lineup with market value and percent of total for each fund in each plan.
 - B. Financial Markets Overview.
 - C. Executive Summary – Details of investment performance or other factors that may contribute to the fund being put on the watch list.
 - D. Performance Summary – Investment returns for each fund, the appropriate market indexes and the appropriate benchmark portfolios for the most recent quarter, year-to-date, one, three, five and 10 year periods. Return calculations must comply with CFA guidelines.
 - E. Full analysis of each fund including style analysis based on each fund's holdings and detailed performance for calendar years and cumulative time periods up to 10 years.

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 SOW:

Implementation must be accomplished according to the agreed upon timelines. The State Project Manager will determine final acceptance of the implementation as identified in Article 1.022.

Work and deliverables will be approved based on criteria as set forth in Article 1.022.

1.052 Final Acceptance – Reserved

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see **Attachment A**.

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

1.062 Price Term

This is a firm, fixed price Contract, subject to the following conditions:

If at any time during the term of this Contract, the Contractor implements or provides for any other client of comparable or smaller size pricing terms more favorable than the aggregate pricing terms to the State, then the Contractor must offer such pricing terms to the State within 30 days of implementing or providing such terms to another party.



On an annual basis, the State may review the financial terms of this agreement to comparable financial offerings available in the marketplace. Should market conditions result in a 1% or greater savings, the State or its representative will provide a report of the market check findings to Contractor. Upon receipt of such report, Contractor will have 10 days to offer a comparable or better financial arrangement. The Contractor financial proposal must be in the form of a Contract amendment and must be effective January 1 of each Contract year, beginning January 1, 2015. If Contractor and the State are unable to agree to the terms of an Amendment, the State may terminate this Contract, without penalty, on 180 days written notice to Contractor.

For each year of the five-year Contract, including the optional two-year renewal periods (if exercised), on the anniversary of the Contract start date, Contractor must provide a written certification stating that Contractor is in full compliance with this Section for that Contract year.

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 must 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 must not include the Federal Excise Tax.

1.070 Additional Requirements – Reserved



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of five years beginning January 1, 2014 through December 31, 2018. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the 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 must 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 must 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 State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and Office of Retirement Services (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:

[Don Mandernach, Buyer](#)

Procurement

Department of Technology, Management and Budget

Mason Bldg, 2nd Floor

PO Box 30026

Lansing, MI 48909

Email: mandernachd@michigan.gov

Phone: (517) 241-7233

2.022 Contract Compliance Inspector

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer, in consultation with Office of Retirement Services, 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:

Kerrie Vanden Bosch
Office of Retirement Services
PO Box 30171
Lansing, MI 48909
Email: vandenboschk@michigan.gov
Phone: 517-636-6104

2.023 Project Manager

The following individual will oversee the project:

John Schiller
Office of Retirement Services
PO Box 30171
Lansing, MI 48909
Email: schillerj@michigan.gov

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 must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under 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 must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 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 must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

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

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

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

**2.034 Website Incorporation**

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and 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 must 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 must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must 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 must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General – Reserved**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 must 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 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 must 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 must 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 must 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 are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (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 must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for 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 must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State 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 must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must 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 must provide a written explanation including reasonable detail outlining the reasons for the rejection.



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

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

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

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

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

2.068 Contract Management Responsibilities

The Contractor must 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 must 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 must 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 must 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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must 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 must 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 must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must 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. Contractor must be responsible for its agents' and subcontractors' compliance with the terms and conditions listed in this Contract and must mitigate, to the extent practicable, the effects of any violation of such terms by such agents or subcontractors.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must 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 must 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 must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

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

2.090 Security

2.091 Background Checks

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

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

ORS will provide access to policies, procedures, and training that are provided to ORS staff.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within three business days or within 24 hours from the confirmation that a breach has occurred, whichever occurs first.

2.093 PCI Data Security Standard

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the



Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

(e) The Contractor must have, in place, a security plan that details the security requirements of the information system, identifies security controls that satisfy those requirements, and enables periodic reviews and/or timely revisions responsible to system and provide to the CCI updates and organizational changes.

(f) The Contractor must comply with the compliance requirements of all State and Federal Laws, including but not limited to:

- Financial Modernization Act of 1999 (Gramm-Leach-Bliley)
- Michigan Identity Theft Protection Act, MCL 445.61 et seq;
- Michigan Social Security Number Privacy Act, MCL 445.82 et seq.

In addition, the Contractor's IT risk management baseline will be formed from the international standards Cobit, ISO 27001 and 27002 the Codes of Practice for Information Security. These Cobit and ISO standards are used as industry good practice in the Financial Services industry and as a norm for regulators.

(g) The Contractor must annually conduct assessments of risks and threats for unauthorized access, use, or disruption on information systems that support the Plan Sponsor.

(h) The Contractor must protect the confidentiality, integrity, and availability of State of Michigan data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as in electronic, paper or other physical form).

(i) The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing Agency personal, confidential and sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system.

(j) The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise.

(k) The Contractor must have authentication controls and account management (for end-user and administrator accounts) for the application/system, including, but not limited to:

- Account lock out after specified number of failed login attempts;
- Forced use of strong passwords;
- Forced periodic password change;
- Use of unique userid;
- Role-based permissions

(l) The Contractor must be responsible for ensuring application controls are in place and functioning properly within their organization.



- (m) The Contractor must have a system auditing policy that creates, protects, and retains information system audit log records.
- (n) The Contractor must have a system of controls in place when changes (including emergency / non-routine and configuration) to existing IT resources are logged, authorized, tested, approved, and documented.
- (o) The Contractor must have, in place, a contingency plan to detect and respond to incidents including those involving potential unauthorized access, use, or disclosure of protected information.
- (p) The Contractor must have a system of controls in place to restrict physical access to their organization's facilities and data centers to authorized personnel.
- (q) The Contractor must provide security awareness training required for their employees at minimum on an annual basis.
- (r) The Contractor must have security controls employed for web application(s) to provide a high level of security to protect confidentiality of data transmitted over the public internet.
- (s) The Contractor must have a copy on file of their personnel security policy and related documents describing hiring practices that include mandatory background check procedures.
- (t) The Contractor must notify the Plan Sponsor, to the extent possible, identification of each individual who's PII has been or is reasonably believed to have been accessed, acquired, used or disclosed during a breach.
- (u) Contractor must maintain a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of Personally Identifiable Information relative to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor will provide Plan Sponsor with a high level summary of its current Information Security Program or Privacy Program if requested.

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under 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 must 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 must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must 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 must 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 must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

For 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 must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.



2.113 Retention of Records

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

2.114 Audit Resolution

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

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (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 must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must 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 must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into 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, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

2.122 Warranty of Merchantability - Reserved

2.123 Warranty of Fitness for a Particular Purpose – Reserved

2.124 Warranty of Title – Reserved

2.125 Equipment Warranty – Reserved

2.126 Equipment to be New – Reserved

2.127 Prohibited Products – Reserved

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 must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must 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 must 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 must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must 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 must be entitled to coverage to the extent of the higher limits.

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

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

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

- 2. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

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

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

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

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

- 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

- 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 must 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: \$3,000,000.00 each occurrence and \$3,000,000.00 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 must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must 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 must 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 must 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 must 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) must 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 must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional 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 must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under 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 must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of 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 must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under 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 must 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 must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except



to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must 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 must 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 must 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 must 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 must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in 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 must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate 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 must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must 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 must 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under 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 must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate 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 must 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 must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to

Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate 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 must 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 180 days. These efforts must 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 must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by 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 must 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 must 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 must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

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

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must 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 must 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 must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, 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 must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must 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 must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (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 must 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, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

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

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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



Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements 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 must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must 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 must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
- (2) Contractor must 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 must 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 must 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 must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

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

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

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Reserved

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

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

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

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

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or



acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities – Reserved

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 must 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 must 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 must 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 must (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. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

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 must 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 must 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 must 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 must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must 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 must 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 must 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 must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must 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 – Reserved

2.258 Final Acceptance – Reserved

2.260 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 must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(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 must 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 must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally



identifiable information (PII) as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the PII. Contractor (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Personally Identifiable Information necessary to accomplish the purpose of the request, use or disclosure.

(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 must 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 PII only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the PII. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing - Reserved

2.290 Environmental Provision – Reserved

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 must 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

COMMON PLAN COSTS

The State expects the cost of certain plan services to be covered by fund investment management charges and direct transaction costs to be paid by the using participant. Both of these costs are applicable to Pricing Model 2 below. Plan services to be covered by investment management charges include but are not limited to:

Plan administration and per participant recordkeeping	Transaction confirmation statements
Record maintenance for vesting, loan, hardship, beneficiaries, deferral limits, etc.	Toll free telephone access
Client relationship management	- Voice Response System (VRS)
Custodial trustee services	- live rep support
Trustee services for outside investments	Customer service center
Check processing (excluding expedited services)	Internet site and automated web site services
1099-R and other tax forms	- plan sponsor site & query capability
Required minimum distribution processing	- participant web site (transactions, reallocations, on-line advisory services, personal rate of return, information, calculators, etc.)
Postage & wire fees	Password generation and reissuance
- for participant communications, distributions, etc.	Set-up/ongoing software development/updating
- for state transfers	All employee communication & education
Hardship qualification evaluation, processing, suspensions, etc.	- plan guides and brochures
Domestic Relations Order (DRO) administration (excluding distribution processing)	- awareness materials (posters, flyers, etc.)
Wire/ACH fees for participant distributions	- video tapes & webinars
Participant statements, to include:	Local and on-line enrollment services
- performance sheets	- Auto-enrollment processing
- market commentaries	- Initial enrollment meetings
- newsletters	- Ongoing enrollment meetings
- fee notices	- enrollment materials (generic and customized)
Annual, quarterly and monthly reviews & reports (standard and ad hoc)	Audio tapes
Legislative and regulatory updates & support	Retirement planning and advice tools
Transfers, allocation changes, multiple distribution options, etc.	Audit support



Attachment A, Pricing

Effective January 13, 2014, costs for the following services should be charged fully and directly to the participants who utilize these services:

Transactional Pricing:

Comments:

Loan administration		
- Loan origination	\$75.00	Participant who elects to take a loan will be assessed an initial loan origination fee.
- Maintenance	\$35.00	Per year (assessed as \$8.75 quarterly) – new loans only
Self-directed brokerage (Self-Managed Account)	\$50.00	Participants who elects to invest in the Self Directed Brokerage Account are assessed an annual fee.
Professional Acct Mgmt/Investment Advisory Svcs		A tiered asset-based fee on total assets for participants enrolled in the Professional Managed Accounts.
	0.30%	On the first \$100,000.00 of assets
	0.25%	On the first \$150,000.00 of assets
	0.20%	On assets above \$250,000.00
Annuity products (for retirement)	N/A	No fee for use of annuity service. Fees on annuity products are reported separately.
Overnight check processing	\$50.00	Overnight express mail service is available for a fee of \$50 if elected by the participant.
DRO processing	\$450.00	DRO processing which includes two reviews and a final qualification.
Distribution Fees		Distribution Fees exclude installments, participants age of 70+, RMDs, distributions under \$100.00 and automated payouts (for residuals and deminimus loans)
	\$75.00	Full Distribution Fees
	\$25.00	Partial Distribution Fees
	\$50.00	In-service Withdrawal Fees

Agreed Upon Future Fee Reductions to Reflect Plan Growth

Years 1-5: \$41.00 per unique participant SSN
 Years 6-7: \$39.75 per unique participant SSN
 Years 8-9: \$38.50 per unique participant SSN

Pre-requisites for pricing stated above for years 6-9:

- Extensions are mutually agreed upon both parties
- Total unique participant count is at least 200,000

Per Participant Flat Fee

Per participant Flat Fee	Quarterly	Annually
Amount to Recordkeeper	\$ 6.25	\$ 25.00
Amount to State of Michigan	\$ 4.00	\$ 16.00

Discounts reflected in pricing stated above for years 6-9 come out of the recordkeepers revenue. The State of Michigan will receive \$4.00 quarterly / \$16.00 annually for the duration of the Contract.