



# 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 071B4300052

<b>CONTRACTOR</b>	Novitex Enterprise Solutions, Inc.
	758 Rainbow Road
	Windsor, CT 06095
	Mark Ptakowski
	860-607-2603
	mark.ptakowski@novitex.com
	*****7073

<b>STATE</b>	Program Manager	Kristen Hampton	DTMB
		517-322-5488	
		hamptonk@michigan.gov	
<b>STATE</b>	Contract Administrator	Valerie Hiltz	DTMB
		(517) 284-7026	
		hiltzv@michigan.gov	

CONTRACT SUMMARY				
<b>DESCRIPTION: DISASTER RECOVERY SERVICES DTMB</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2014	December 31, 2016	1 - 2 Year	December 31, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
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				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2, 1 year options	<input type="checkbox"/>		December 31, 2018
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 104,006.00		\$ 80,000.00	\$ 184,006.00	

**DESCRIPTION:** Effective July 18, 2016, the first and second option years available on this contract are hereby exercised and is increased by \$80,000.00. The revised contract expiration date is December 31, 2018. All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, and DTMB Procurement approval.

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

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B4300052**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Novitex Enterprise Solutions, Inc. 758 Rainbow Road Windsor CT, 06095	Mark Ptakowski	Mark.ptakowski@novitex.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	860-607-2603	*****7073

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Kristen Hampton	517-322-5488	hamptonk@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Valerie Hiltz	517-284-7026	hiltzv@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Disaster Recovery Services DtmB			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2014	December 31, 2016	2 - 1 Year	December 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Subscription Fee Paid Yearly in Advance		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	December 31, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 100,506.00		\$ 3,500.00	\$ 104,006.00	

**DESCRIPTION:** Effective December 18, 2015, this contract is hereby INCREASED by \$3,500.00 for DTMB use. The Contract Administrator is changed to Valerie Hiltz, DTMB. The Contractor's Primary Contact is changed to Mark Ptakowski, Novitex. The Contractor's address is changed to 758 Rainbow Road, Windsor, CT 06095. All other terms, conditions, specifications and pricing remain the same. Per Contractor and DTMB agreement, and DTMB Procurement approval.

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

**NOTICE  
 OF  
 CONTRACT NO. 071B4300052**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Novitex Enterprise Solutions, Inc 27 Waterview Drive Shelton, CT 06484	Thomas Baerlein	<a href="mailto:Thomas.Baerlein@novitex.com">Thomas.Baerlein@novitex.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	203.922.5811	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
<b>CONTRACT COMPLIANCE INSPECTOR:</b>	DTMB	Kristen Hampton	517-322-5488	Hamptonk@michigan.gov
<b>BUYER:</b>	DTMB	Stephen Rigg	517-284-7043	Riggs@michigan.gov

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b>			
Disaster Recovery Services - DTMB - Consolidated Print Center / Mailing Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	January 1, 2014	December 31, 2016	2 – 1 Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Subscription Fee Paid Yearly in Advance	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			<b>\$100,506.00</b>

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of the agreement between the State and the Contractor. Yearly subscription fee payment will be made by the Department of Technology, Management & Budget through the issuance of a Purchase Order.

Notice of Contract #: 071B4300052

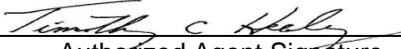
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**FOR THE CONTRACTOR:**

Novitex Enterprise Solutions, Inc

Firm Name



Authorized Agent Signature

Timothy C. Healy, President

Authorized Agent (Print or Type)

February 2, 2014

Date

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**FOR THE STATE:**

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB Procurement

Enter Name of Agency

Date



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- Attachment A - Disaster Declaration Notice
- Attachment B – Pricing
- Attachment C – Office of Support Services
- Attachment D - Non-Disclosure Agreement



## 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.

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

**Business Day** means any day other than a Saturday, Sunday or State-recognized legal holiday 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.

**CCI** means Contract Compliance Inspector.

**Days** means calendar days unless otherwise specified.

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

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

**Environmentally Preferable Products** means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

**Hazardous Material** means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

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

**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.

**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.

**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.

**SPOC** means single point of contact.

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

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

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

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

**Pollution Prevention** means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

**Work in Progress** means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

**Work Product** refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.



## **1.010 Project Identification**

### **1.011 Project**

This Contract is to provide a Disaster Recovery Services for the State of Michigan (State), Department of Technology, Management & Budget's (DTMB), centralized print and mail facility for identified critical applications. The current applications consist of Treasury warrants, Unemployment Insurance Agency unemployment checks, the Department of Human Services "Bridges" mailings, and the Department of Community Health Champs mailings and remittance of advice statements (Attachment 1). Applications may be added or deleted during the Contract period as determined by the State of Michigan.

Disaster Recovery Services include, but are not limited to:

- Provide for the processing of Consolidated Print Center (CPC) / Mailing Services (MS) applications that have been designated by CPC/MS partners and customers as critical to the health and welfare of the citizens of the State of Michigan.
- Serve as a secure recovery site for the continued processing of these critical applications.
- Mitigate processes so that the recovery time and impact is minimized.
- Meet or exceed the state and/or federal deadline requirements that regulate the processing of the applications as specified by CPC/MS partners and customers.

### **1.012 Reserved**

## **1.020 Scope of Work and Deliverables**

### **1.021 In Scope**

This project consists of the following scope:

- A. Validation and verification of the following requirements:
  1. Secured Facility
  2. Network Connectivity
  3. Testing
  4. Printing
  5. Postal and Distribution
  6. Activation
  7. Reporting
  8. Storage
  9. Functional
- B. Interfaces
  1. Electronic Data Transfers

### **1.022 Work and Deliverable**

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:

#### **A. Deliverable(s)**

The following are the tasks and deliverables associated with this Contract.

#### **1. Initial Setup Infrastructure**

Facility – Secure facility; network connectivity; CPC environment; production implementation infrastructure for disaster; network requirements; testing requirements; includes interfaces; Output Manager hardware and software requirements.

Application Development – Initial application setup to integrate with Contractor's production processes.

#### **2. Requirements**

**Secured Facility Requirements:**

The Contractor shall:

- a) Provide access to space for up to two (2) State of Michigan staff within 24 hours from notice of activation to assist Contractor staff.
- b) Provide access to phones for two (2) State of Michigan staff within 24 hours from notice of activation
- c) Provide access for two (2) State of Michigan staff to internet access within 24 hours from notice of activation. The State of Michigan will provide their own computers.
- d) Provide access and use of common office equipment such as fax, copying, etc., for on-site State of Michigan staff.
- e) The facility must be secure within two (2) hours from notice of activation. Security shall mean that the facility is not accessible to the general public. Only authorized personnel who have signed confidentiality agreements have access to the facility or portion of the facility that the State's printing and mailing will be prepared.
- f) Provide employee confidentiality and area security during production and until delivery to USPS.
- g) Meet the confidentiality requirements, sign required confidentiality statements and submit them to the CCI.. (Attachment D)

**3. Network Connectivity Requirements:**

- a) Must receive data transmissions via a secure connection established between the State and Contractor.
- b) Must accept pre-composed data files for application printing.
- c) Server Requirement – The Contractor must provide secure directories/queues to accept files transmitted from the State of Michigan. The queues will be established during the testing phase of the project.
- d) For initial setup and testing, the Contractor must demonstrate that format integrity matches CPC/MS for each application
- e) Must have the ability to process all applications listed by CPC/MS (Attachment C) to noted specifications and consistent with the Tier time requirements.
- f) Must define network and server security procedures in place for data and resources and provide written documentation to the CCI.
- g) Must define procedures to limit access to staff specifically authorized by the CCI.
- h) Must be able to accommodate files that have been formatted by the Consolidated Print Center.

**4. Testing Requirements:**

- a) Designate a Testing Single Point of Contact (SPOC).
- b) Comply with testing of each application as they are set up, which includes but not limited to test print, data integrity and mail processing.
- c) Would be mailed within 24 hours and delivered
- d) Comply with testing once per year, unless additional testing is requested by the CCI. The test will include test print, data integrity and a test of mail processing. The testing also will ensure that all requirements of the Contract are demonstrated. These tests will be of a sample not to exceed 10% of identified applications per test. One hundred percent of the test sample must be mailed to the Logistics and Operations Support Division (LOSD) Representatives within 24 hours of file transmission to the disaster recovery site for validation that all mailing requirements have been met with the exception of change control. The time frame would be negotiated at the time of testing.

**5. Printing:**

- a) Allow State of Michigan employees to monitor print process to ensure applications are formatting correctly.
- b) Provide Magnetic Ink Character Recognition (MICR) printing for warrants and checks.
- c) Must be able to print data file formats sent over from the Consolidated Print Center. Formats are identified in application list below (Section C).



- d) Print output quality must meet CPC/MS requirements, which includes US Postal Service (USPS) requirements on bar codes and Bank One requirements. (See Attachment C for requirements).

**6. Postal and Distribution Requirements:**

- a) Provide fulfillment tasks such as bursting, folding, inserting, metering, and presorting.
- b) Send documents to Pitney Bowes Presort by presorted First Class mail for postal rate savings with 3 digit postal discount. Ensure daily delivery to Pitney Bowes Presort for drop-off to the USPS. Ensure that printing and mailing schedules and deadlines, as directed by the State, are met (Attachment C).
- c) Utilize all postal volume discounts available (3 digit) and mail is delivered to USPS.
- d) Must have drop ship authorization for the State of Michigan's USPS Permit 1200 or the use of company permit
- e) Applications printed must be prepared and presented to the USPS within their acceptance times on the day they are printed and in accordance to the schedule provided (Attachment C). Mail will be printed and inserted the same day as obligated by the term same day SLA though it will be postmarked for the next day.
- f) Allow State of Michigan employees to monitor the mail process for quality assurance purposes.
- g) Provide a copy of the USPS mail acceptance agreement in the name of the organization that will process and deliver the mail to the USPS.

**7. Activation:**

- a) Contractor shall have up to 24 hours to begin production. The State of Michigan will make the decision to formally declare that a disaster has interrupted OSS' ability to provide critical services. Upon activation, the State will issue a Disaster Declaration Notice (Attachment A)
- b) Must confirm connectivity and receive files within 2 hours of activation
- c) Must begin acclimating supplies within 2 hours from notice of activation
- d) Designate Event Lead - Single Point of Contact (SPOC) for event declaration.
- e) Secure data for the duration of the emergency and verify destruction of any printed or electronically stored data after the event.
- f) The Contractor will fully cooperate with occasional audits, which will include storage verification as well as compliance with Contract requirements.  
Contractor will agree to temporarily continue to provide Recovery Services on a limited basis in order to assist the transition of the State applications back to the State site, if requested.

**8. Storage Requirements:**

- a) Provide secure onsite storage of required supplies to last three days. Upon plan activation, the Contractor must accept Contractor drops.
- b) Demonstrate that stored materials are resident and updated as those updates become available from the CPC/MS.
- c) Detail and document the procedure that will be followed to ensure complete destruction of outdated materials and electronic resources.
- d) Define and document storage and inventory security procedures in place, and the define procedures to limit access to staff specifically authorized by the state.

**9. Functional Requirements:**

- a) Contractor must have the ability to print all State of Michigan applications and machine insert matching document sets using existing bar-code(s) to reduce mailing costs for the State.
- b) Contractor must have the ability to print both continuous feed and cut-sheet applications.
- c) Contractor must adhere to the print and mail timelines outlined by the State of Michigan.
- d) Contractor must have the ability to prepare the mail to meet all USPS automated presorted discounts and present the mail to the postal service for acceptance.

**B. Interfaces**

If a disaster occurs, the data files will be transmitted from the CCI or their designee via secure protocol when agreed upon by both the Contractor and the CCI. The Contractor must be able to receive and print all data file formats outlined below.

The applications and corresponding formats are as follows:

**Application Details**

Job Name: CHAMPS  
Reports: All Correspondence Letters  
Agency: Department of Community Health  
Data Stream: PDF  
Stock: Twenty-pound 8.5X11 un-drilled paper

Job Name: CHAMPS-RA  
Reports: MQ-870, MQ-872, MQ-872  
Agency: Department of Community Health  
Data Stream: PDF  
Stock: Twenty-pound 8.5X11 un-drilled paper

Job Name: Treasury Warrants  
Reports: 401, 411, 421, 431  
Agency: Department of Treasury  
Data Stream: PCL  
Stock: Treasury Warrant 9X12 preprinted pin-feed stock  
Note: MICR Toner required.

Job Name: Treasury Cut-Sheet Warrants  
Reports:  
Agency: Department of Treasury  
Data Stream: PCL  
Stock: Treasury Warrant 8 ½ x 11 preprinted cut sheet stock  
Note: MICR Toner required.

Job Name: UA Checks  
Reports: UA Checks  
Agency: Unemployment Agency  
Data Stream: PCL  
Stock: UA check 9X12 preprinted pin-feed

Job Name: DHS Bridges  
Reports: All Correspondence Letters  
Agency: Department of Human Services  
Data Stream: PCL  
Stock: Twenty-pound 8.5X11 un-drilled paper

**1.030 Roles and Responsibilities****1.031 Contractor Staff, Roles, and Responsibilities**

Location of Work - The work is to be performed, completed, and managed at the Contractor's secured site as identified.



In the event of a disaster, the Contractor will provide a SPOC to work closely with the designated personnel from the State to ensure a smooth transition to the new system. The SPOC will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's SPOC responsibilities include, at a minimum:

- a) To be the single point of contact for CPC/MS staff. This Project Manager must be available at any time in case the disaster recovery plan is activated.
- b) Manage all defined Contractor responsibilities in this Scope of Services.
- c) Serve as the point person for all project issues
- d) Coordinate and oversee the day-to-day project activities of the project team
- e) Assess and report project feedback and status
- f) Escalate project issues, project risks, and other concerns
- g) Review all project deliverables and provide feedback
- h) Proactively propose/suggest options and alternatives for consideration
- i) Utilize change control procedures
- j) Facilitate dispute resolution, and
- k) Advise the State of performance under the terms and conditions of the Contract.
- l) Support the management of the Contract

The Contractor will designate a backup to the SPOC, and will notify the State in writing in advance if there will be a change of project coverage. See Attachment A for a list of Contractor personnel who can be contacted in the event of a disaster.

The Contractor will provide operators to run all equipment to meet application specifications and time requirements and include technical support; however, CPC/MS may provide staff to provide technical oversight and advice, and special handling requests. Contractor staff will be required by the State to sign individual confidentiality agreements.

### **1.040 Project Plan**

#### **1.041 Reserved**

#### **1.042 Reports**

- A. Contractor will provide a report that details:
  1. Image counts for every file printed
  2. Count of pieces prepared for mailing
  3. Provide detail of total postage used per file
- B. A report with the following information for each application/ job number is due daily from the Contractor upon plan activation:
  1. Application ID number.
  2. Image counts.
  3. Total cost of postage and volumes by application.
  4. Email confirmation of date files received.
  5. The reports will not be considered complete until the Agency Project Manager has formally accepted them.
- C. Testing report that will be required upon application set-up, per test, and upon request of the CCI:
  1. Application ID name / job number.
  2. Designated application queue name.
  3. Date of most recent successful test for data reception from state.
  4. Date of most recent successful test that application test data was printed as required.
  5. Date of most recent successful test that application was properly prepared for mailing as required.



6. Date of most recent successful test that application was distributed as required (by mail or dock pick-up).
- D. Application Reports – Contractors services will provide standard production reports to include production counts and inventory status. If customized reports are required, the Contractor will work with State to determine the parameters.

### **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:

- a) The State's written approval of proof of concept and successful test of transfer of data.
- b) The State's written approval of annual testing of data transfer.
- c) The Contractor's printing and distribution of required documents in the event of a disaster.

#### **1.052 Reserved**

### **1.060 Pricing**

#### **1.061 Pricing**

Prices in **Attachment B** are firm for the term of the Contract

#### **1.062 Price Term**

Payment will be made as follows:

- a) Upon completion of the project set up and successful completion of a test as approved by the State. Successful completion is when the test sample is printed and inserted within 24 hours from transmission of the data to the disaster recovery site with the exception of change control. The time frame would be negotiated at the time of testing as to method of shipment to the State for review
- b) Upon the successful completion of the annual test as approved by the State. Successful completion is when the test sample is printed and inserted within 24 hours from transmission of the data to the disaster recovery site with the exception of change control. The time frame would be negotiated at the time of testing as to method of shipment to the State for review
- c) Disaster Declaration, warehousing materials, programmer/analyst, data processing, image charge, mail preparation, presorting, metering, and postage will be paid upon presentation of an invoice that provides the detail, including date and quantity for each application.

Invoices should be sent to the address stated on the individual purchase order.

#### **1.063 Reserved**

### **1.070 Additional Requirements**

#### **1.071 Reserved**



## **Article 2, Terms and Conditions**

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

#### **2.001 Contract Term**

The Contract is for a period of 3 years beginning January 1, 2014 through December 31, 2016. 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 one 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, or Blanket Purchase Order, which must be approved by the Contract Compliance Inspector or their 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 Reserved**

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 this Contract is severable from all other provisions of this Contract and, if one (1) or more of the provisions of this Contract is declared invalid, the remaining provisions of this Contract remain in full force and effect.

### **2.010 Consents and Approvals**

Except as expressly provided otherwise in this Contract, if either party requires the consent or approval of the other party for the taking of any action under this 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 this Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of this Contract. But either party must assert their rights of strict adherence within a reasonable time of 30 days to allow the other party to take necessary actions to comply.

### **2.012 Survival**

Any provisions of this 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 this Contract for any reason. Specific references to survival in this Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

## **2.020 Contract Administration**

### **2.021 Issuing Office**

This Contract is issued by the Department of Technology Management and Budget, DTMB-Procurement and Department of Technology, Management & Budget Print and Mail Center (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:

William C. Walsh  
Procurement  
Department of Technology Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: walshw@michigan.gov  
Phone: (517) 373-6535

### **2.022 Contract Compliance Inspector**

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer, DTMB-Procurement, in consultation with Department of Technology, Management & Budget, 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:



Kristen Hampton, I Printing Services Manager  
Department of Technology, Management & Budget  
7461 Crowner Drive  
Lansing, MI 48913  
Email: Hamptonk@michigan.gov  
Phone: (517) 322-5488

### **2.023 Contract Changes**

1. (a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins 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. (b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract ("Contract Change Notice").
3. (c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

### **2.025 Notices**

Any notice given to a party under this 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 this 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 is an employee, agent or servant of the State. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of this Contract.

### **2.028 Covenant of Good Faith**

Each party must act reasonably and in good faith. Unless stated otherwise in this 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 this Contract.



## **2.029 Assignments**

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under this 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 this Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign this 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 this 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 this 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 this 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 this Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign this 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.

## **2.030 General Provisions**

### **2.032 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.

### **2.033 Contract Distribution**

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

### **2.034 Permits**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services.

### **2.035 Website Incorporation**

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

### **2.036 Future Bidding Preclusion**

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

### **2.037 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

### **2.038 Disaster Recovery**

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract 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**

Prices are fixed for all Deliverable(s).

### **2.042 Adjustments for Reductions in Scope of Services/Deliverables**

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

### **2.044 Invoicing and Payment – In General**

a. The fees for the Services are set forth in the applicable SOW. All fees are exclusive of all taxes and similar charges that are based on or measured by the fees (plus a amount equal to any associated penalties and interest) which will be billed to Customer, if required or permitted by a tax authority to be collected and paid by PBMS.

b. Contractor will invoice Customer annually. Payments are due forty-five (45) days of the invoice date and will be remitted by electronic funds transfer. All amounts that are forty-five (45) days past due will be subject to a monthly service charge of .75% of the outstanding balance (or such other amount as permitted by local law).

c. Contractor will keep records of the amounts billed to, and paid by, Customer in accordance with generally accepted accounting principles. To verify the accuracy of the billings, Customer will have access to those records upon prior written request, at all reasonable and non-disruptive times during normal business hours.

### **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 this Contract.

### **2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract must constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

### **2.048 Electronic Payment Requirement**

Electronic transfer of funds is required for payments on State contracts. 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 this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. The State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

**2.062 Reserved****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, then the Contractor must immediately remove that personnel and be replaced by a qualified person approved by the state. Approval of replacement person shall not be unreasonably withheld and the process completed within 5 working days. 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 this Contract must perform their duties at Contractor’s facilities.

**2.065 Contractor Identification**

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. 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.

**2.067 Reserved**



## **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 this 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 this 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**

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

#### **2.072 State Consent to Delegation**

Contractor must not delegate any duties under this 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. 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 this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor 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 this Contract will not relieve Contractor of any obligations or performance required under this Contract.

#### **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 this Contract.



## **2.080 State Responsibilities**

**2.081 Reserved**

**2.082 Reserved**

## **2.090 Security**

**2.091 Reserved**

## **2.100 Confidentiality**

### **2.101 Confidentiality**

(a) Each party as allowed by law must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license 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.

(b) Each party as allowed by law will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) 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 to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

### **2.102 Protection and Destruction of Confidential Information**

(a) Each party as allowed by law must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license 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.

(b) Each party as allowed by law will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) 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 to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

**2.103 Reserved**

### **2.104 Exclusions**

The provisions of Section 2.100, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly within ten (10) business days provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

**2.105 No Implied Rights**

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

**2.106 Security Breach Notification**

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; 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 access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within ten 10 business days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

**2.107 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, at its own expense and upon 10 day advance written notice, during normal working hours, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed at any time. The Contractor must provide reasonable assistance for the State's representatives during inspections.

**2.112 Retention of Records**

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

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

**2.113 Examination of Records**

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

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

**2.114 Audit Resolution**

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



### **2.115 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of this Contract, whichever is earlier.

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

### **2.120 Warranties**

PBMS agrees to perform the Services in a professional and workmanlike manner and in accordance with the [Agreement, Statement of Work]. As Customer's sole remedy, PBMS will re-perform the Service at no additional charge if Customer notifies PB within five business (5) days of the date the Services are performed.

### **2.121 Warranties and Representations**

The Contractor represents and warrants:

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

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

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

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the 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(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

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

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.



(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded

**2.122 Reserved**

**2.123 Reserved**

**2.124 Reserved**

**2.125 Reserved**

**2.126 Reserved**

**2.127 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**

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

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

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

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

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

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

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

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



- (h) The Contractor must provide, within five business days, written notice to the Director of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
- (i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (j) The Contractor is responsible for the payment of all deductibles.
- (k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
- (l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (m) The Contractor is required to pay for and provide the type and amount of insurance checked  below:

**(i) Commercial General Liability**

Minimal Limits:

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

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

**(ii) Umbrella or Excess Liability**

Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

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

**(iii) Motor Vehicle**

Minimal Limits:

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

**(iv) Hired and Non-Owned Motor Vehicle**

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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



**(v) Workers' Compensation Insurance**

Minimal Limits:

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

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

Additional Requirements:

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

**(vi) Employers Liability**

Minimal Limits:

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

Additional Requirements:

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

**(vii) Employee Fidelity (Crime)**

Minimal Limits:

- \$1,000,000 Employee Theft Per Loss

Deductible Maximum:

- \$50,000 Per Loss

Additional Requirements:

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

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

**(viii) Professional Liability (Errors and Omissions)**

Minimal Limits:

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

Deductible Maximum:

- \$50,000 Per Loss

**(ix) Medical Malpractice**

Minimal Limits:

Deductible Maximum:

- \$5,000 Each Occurrence

 **(x) Cyber Liability**Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

Additional Requirements:

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

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

 **(xi) Property Insurance**

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

**2.132 Subcontractor Insurance Coverage**

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

**2.133 Certificates of Insurance**

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

**2.140 Indemnification****2.141 General Indemnification**

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 Rights To Data**

Customer represents that it owns the right to the data it is providing to Contractor under this Agreement and the SOW and that, in providing Contractor with the data, Customer is acknowledging that Contractor is authorized to print and mail the data files in accordance with the SOW.



### **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 this 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**

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, including attorney fees.

## **2.150 Termination/Cancellation**

### **2.151 Notice and Right to Cure**

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

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

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



(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

### **2.153 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for changes, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least sixty 60 business days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

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

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for this 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' notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

### **2.155 Termination for Criminal Conviction**

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

### **2.156 Termination for Approvals Rescinded**

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

### **2.157 Rights and Obligations upon Termination**

(a) If the State terminates this Contract for any reason, the Contractor must:



- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
- (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
- (iv) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies resulting from the terminated Contract; and
- (v) take all appropriate action to secure and maintain State information confidentially in accordance with Confidentiality clause

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

## **2.158 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

### **2.160 Reserved**

### **2.170 Transition Responsibilities**

#### **2.171 Contractor Transition Responsibilities**

If this Contract terminates under , Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 90 days from the date of termination. The Contractor must provide any required reports and documentation

#### **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 Reserved**

#### **2.175 Transition Payments**

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this 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 this 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. 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**

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.025 Notices, together with all supporting documentation for the claim.



(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

### **2.192 Informal Dispute Resolution**

(a) If, after a reasonable time following submission of a claim under Section 2.191, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.192, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.1933, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

### **2.193 Injunctive Relief**

A claim between the State and the Contractor is not subject to the provisions of Section 2.192, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

### **2.194 Continued Performance**

Each party agrees to continue performing its obligations under this 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 this 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 this Contract, Contractor must comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 et seq., as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. 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 this 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., as amended, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., as amended, and any breach of this provision may be regarded as a material breach of this 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 this 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 this 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 and any Subcontractor must comply with all applicable state and federal laws.

## **2.204 Reserved**

### **2.210 Governing Law**

#### **2.211 Governing Law**

This 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 this Contract must be resolved in the State of Michigan and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

### **1.220 Limitation of Liability**

**2.221 Limits on Liability.** Contractor's total liability under an SOW for any and all claims proven to have been caused by Contractor, at law or equity, will not exceed the total Subscription Fee paid by the State under the applicable SOW during the Term of the Agreement. Neither party will be liable for special, punitive, incidental, consequential or indirect damages, including without limitation lost profits, loss of data, or business opportunity. These limitations do not apply to (i) bodily injury, tangible property damage (this exclusion not applicable to any per document package limitation set forth in a SOW) claims, (ii) claims related to infringement by PBMS of the intellectual property rights of a third party, (iii) third party indemnification claims or, (iv) claims that are proven to have been caused by a party's gross negligence, willful misconduct or fraud.

### **2.230 Disclosure Responsibilities**

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

(a) Within 30 days after receiving notice of any material litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and



(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

## **2.232 Reserve**

### **2.233 Bankruptcy and Insolvency**

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

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

The Contractor must place 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) The Contractor must notify the State within twenty-four (24) hours upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) 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 within twenty-four (24) hours and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

### **2.242 Changes**

If allowed by Section 1.061, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).



(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

### **2.243 Reserved**

### **2.244 Excusable Failure**

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, 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; 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 this 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 Reserved****2.252 Reserved****2.253 Reserved****2.254 Reserved****2.255 Reserved****2.256 Reserved****2.257 Reserved****2.258 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 Reserved****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 as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

**2.264 Reserved****2.270 State Standards****2.271 Reserved****2.272 Reserved****2.273 Reserved**



## **2.274 Electronic Receipt Processing Standard**

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

### **2.280 Extended Purchasing Program**

## **2.281 Reserved**

### **2.290 Environmental Provision**

#### **2.291 Environmental Provision**

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

- (a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).



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

**Refrigeration and Air Conditioning:**

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

**Environmental Performance:**

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

**2.300 Other Provisions**

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

Equipment, materials, or supplies, that will be furnished to the State under the Contract 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**

**DISASTER DECLARATION NOTICE**

FORM OF DISASTER DECLARATION NOTICE

**From: (customer name)**

Date:

Time:

For purposes of receiving Disaster Recovery Services from Novitex Enterprise Solutions, Inc., the undersigned declares that it is currently experiencing a Disaster as such term is defined in the Business Recovery Services Agreement with Novitex Enterprise Solutions, Inc. This Disaster is affecting the undersigned and at its site located at \_\_\_\_\_.

**CUSTOMER REPRESENTATIVES AUTHORIZED TO DECLARE A DISASTER:**

<u>Title</u>	<u>Telephone</u>	<u>Fax</u>
Director, OSS	517-322-5005	517-322-1423
DTMB Chief Deputy Director	517-373-1004	
DTMB Director	517-373-4978	

**NOVITEX ENTERPRISE SOLUTIONS, INC DISASTER RECOVERY REPRESENTATIVES AUTHORIZED TO RECEIVE DISASTER DECLARATION NOTIFICATION:**

	<b>NAME*</b>	<b>TITLE</b>	<b>TELEPHONE</b>	<b>CELL</b>	<b>HOME</b>
1	Mark Ptakowski	Operations Manager	203-922-5811	203-395-2601	203-746-3923
2	Tom Baerlein	Client Relationship Manager	203-922-5818	860-214-4904	860-521-1376
3	John Chaves	Manager Inserting	203-922-5828	860-558-0926	860-436-6547
4	Troy Robinson	Manager Print	203-922-5824	617-659-8733	203-745-4753

Fax Number for all of the above: (203) 922-5899  
 Novitex Enterprise Solutions, Inc.  
 27 Waterview Drive  
 Shelton, CT 06484

\*Contractor contact can only be changed with 30 days advance written notice to the State requesting a change. The change request must include the name of the individual, job title, and their office, cell and home telephone numbers. A Contract change notice will be issued by the State indicating acceptance of the change.



**Attachment B, Price**

CPC Disaster Recovery/Business Continuity Pricing

**Method of Payment**

The Contractor will be paid upon the completion of project milestones base on the firm fixed deliverable model provided below. The Subscription Fee shall by payable annually in advance, with the first annual payment to be made upon Commencement Date. Postage will be billed at actual cost of current USPS rates.

Description of Items	Term	3 Year	DR Plan for 1 Month (if Disaster Occurs)	Testing (Annually)	Annual - Year 1	Annual - Year 2	Annual - Year 3
<b>1. Subscription Fee:</b>	Annual	\$33,502	Based on Projections of 5,864,200 images and 2,624,200 envelopes	Based on Projections of 11,600 images and 9,635 envelopes	\$33,502	\$34,507.06	\$35,542.27
<b>2. Declaration Fee:</b>	As Declared	5% of annual sub fee	\$1,675.10		\$1,675.10	\$1,725.35	\$1,777.11
<b>3. Printing Costs:</b>	Per Image	\$0.0142	\$83,271.64	\$164.72	\$164.72	\$169.66	\$174.75
<b>e) Automated Folded Inserting Costs:</b>	Per Envelope	\$0.0310	\$81,350.20	\$298.69	\$298.69	\$307.65	\$316.87
<b>f) Automated Flat Inserting Costs:</b>	Per Envelope	\$0.125	\$3,750.00	\$1,205.34	\$1,205.34	\$1,241.50	\$1,278.74
<b>g) Manual Inserting &amp; Processing:</b>	Per Person Per Hour	\$28.00	\$8,960.00	\$168.00	\$168.00	\$173.04	\$178.23
<b>h) All Associated Pre-Sorting Costs:</b>	Per Envelope	\$0.018	\$47,235.60	\$173.43	\$173.43	\$178.63	\$183.99
<b>i) Postage Costs:</b>	Per Envelope	See note (a.) below					
<b>j) All Warehousing Costs:</b>	Per Pallet Per Month	Included (b.) below	\$80.00 (4 pallets)		\$80.00	\$82.40	\$84.87
<b>k) Ongoing Testing Costs:</b>	As Per Above Fees	See note (c.) below					
				<b>*Note: #6 based off 2 people @ 160 hrs</b>	<b>*Note: #6 based off 2 people @ 3 hrs</b>		



Attachment C							
Office of Support Services							
App ID	Agency	File Type	Estimated Volumes	Freq.	Time Requirements	Envelope Required	Functions Performed
Remittance Advices	DCH	PDF	75,000	Weekly	None	First Class Flat	Manually insert into flat envelopes, meter and mail
Contractor Warrants	Treasury	PCL	8,500	Daily	Printed and Mailed same day. Print and mail total reconciliation.	Env 164 with Permit 1200	Machine cut, fold, insert in permit envelopes, presort and mail
Income Tax Warrants	Treasury	PCL	6,000	Daily	Printed then Mailed next business day. Print and mail total reconciliation.	Env 164 with Permit 1200	Machine cut, fold, insert in permit envelopes, presort and mail
Payroll Warrants	Treasury	PCL	4,200	Bi-weekly	Printed then Mailed in 3 business days. Print and mail total reconciliation.	Env 164 with Permit 1200	Machine cut, fold, insert in permit envelopes, presort and mail
Retirement Warrants	Treasury	PCL	15,000	Monthly	Printed then Mailed in 4 business days. Print and mail total reconciliation.	Env 164 with Permit 1200	Machine cut, fold, insert in permit envelopes, presort and mail
Unemployment Checks	UIA	PCL	60	Daily	Printed and Mailed same day. Print and mail total reconciliation.	Env 165 with Permit 1200	Machine fold, insert in permit envelopes, presort and mail
Bridges	DHS	PCL	262,000	Daily	Printed and Mailed same day. Data file receipt confirmation and daily print and mail totals.	DHS Env 225 with permit 1200 and 226 with bfm 1312	Machine fold, insert in permit envelopes, presort and mail
CHAMPS	DCH	PDF	80	Daily	Printed and Mailed same day	DHS Env 225 with permit 1200	Machine fold, insert in permit envelopes, presort and mail



**Attachment D**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**  
**OFFICE OF SUPPORT SERVICES**  
**NONDISCLOSURE AGREEMENT**  
**CONTRACTORS / CONTRACTORS**

The State and \_\_\_\_\_ (hereinafter Contractor), have entered into a Contract for the provision of goods or services. During the course of providing such goods or services, the Contractor/Contractor may be exposed to, or come into possession of, information that is sensitive or confidential and prohibited from unauthorized use or disclosure under Section 54(d) of the Revenue Act, the Michigan Employment Security Act (Act No. 1 of the Public Acts of 1936, 1<sup>st</sup> Extra Session, MCL 421.54(d) and Revenue Act, Public Act 122 of 1941, MCL 205.28(1)(f), the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public law 104-191, Public Act 454 of 2004 Social Security Number Privacy Act, and Public Act 452 of 2004, as amended Identity Theft Protection Act.

To insure the continued protection and nondisclosure of such sensitive and confidential information, the Contractor named above agrees to:

1. Not disclose any sensitive or confidential information the Contractor may be exposed to, or come to possess, unless authorized by law and consistent with this Contract.
2. Use the sensitive or confidential information only for the purposes authorized by law and consistent with this Contract.
3. Store sensitive or confidential information in a place physically secure from access by unauthorized persons.
4. Use industry standards to store or process sensitive or confidential electronic information, in any format, not limited to magnetic tapes, hard drives, or mobile devices, in such a way that unauthorized persons cannot obtain the information by any means.
5. Train/instruct all personnel having access to the sensitive or confidential information about the precautions that must be taken to maintain the confidentiality of such information and about the criminal penalties that apply for unlawful disclosure of such information, and agrees to obtain and maintain on file a signed statement from all such personnel acknowledging that they have been so instructed and that they will adhere to the instructions and maintain the confidentiality of such information.
6. Dispose of information accessed or obtained, and any copies made thereof, after the purpose for which the information is accessed or maintained is served, either by returning such information or by appropriately destroying such information by shredding or using a method for electronic information that will render data unidentifiable.
7. On-site inspections if deemed necessary to assure that the confidentiality requirements of this Agreement and of state law are being met.
8. Ensure that any agent(s) or sub Contractor(s) who has access to sensitive or confidential information agree to the same restrictions and conditions that apply to the Contractor.

Failure to comply with any of these contractual requirements may result in the termination of this Contract.

**Michigan Penalties**

MCL 205.28(1) (f) provides that you may not willfully browse any Michigan tax return or information contained in a return. Browsing is defined as examining a return or return information acquired without authorization and without a **need to know** the information to perform official duties. Violators are guilty of a **felony** and subject to **fines of \$5,000 or imprisonment for five years, or both.**



Any person who violates any other provision of the Revenue Act, MCL 205.1, et seq., or any statute administered under the Revenue Act, will be guilty of a misdemeanor and **fined \$1,000 or imprisonment for one year, or both**, MCL 205.27(4).

Michigan Employment Security Act (Act No. 1 of the Public Acts of 1936, 1<sup>st</sup> Extra Session, MCL 421.54(d) Disclosure of confidential information obtained from the agency punishable upon conviction by imprisonment for up to **90 days**, or a **fine of up to \$1,000, or both**.

**Federal Penalties**

If you willfully disclose federal tax returns or tax return information to a third party, you are guilty of a **felony** with a **fine of \$5,000 or imprisonment for five years, or both, plus prosecution costs** according to the Internal Revenue Code (IRC) §7213, 26 USC 7213.

In addition, inspecting, browsing or looking at a federal tax return or tax return information without authorization is a felony violation of IRC §7213A, 26 USC 7213A, subjecting the violator to a **\$1,000 fine or imprisonment for one year, or both, plus prosecution costs**.

In regard to medical information, HIPAA and State memorandum of understanding with the Michigan Department of Community Health (MDCH) requires State employees and its Contractors to protect the confidentiality of health information. Protected health information (PHI) means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

These Public Acts hold that any authorized representative who has access to Michigan tax returns and Michigan tax return information, Michigan Employment Security information, and or Medical information subject to the Health Insurance Portability and Accountability Act (“HIPAA”) are subject to all applicable laws and regulations. All unauthorized uses or disclosures of information are subject to criminal and civil penalties under the Michigan Revenue Act and or the Michigan Employment Security Act (Act No. 1 of the Public Acts of 1936, 1<sup>st</sup> Extra Session, MCL 421.54(d) and the Health Insurance Portability and Accountability Act of 1996, Public law 104-191, as well as the Federal Internal Revenue Code (IRC) §7213, 26 USC 7213.

**Contractor, or SubContractor NONDISCLOSURE AGREEMENT**

**Certification**

By signing this Agreement, I certify that I have read the above confidentiality provisions and understand that failure to comply is a felony.

I certify that I have viewed the Confidentiality Training video provided by the State and or have read the Non-Disclosure Agreement.		
Print name of employee signing this agreement	Signature of person named above	Date signed
Print Witness name (Required)	Signature of Witness (Required)	Date signed