STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number **1**

to

Contract Number **071B4300098**

CONTRACTOR	
	Croskey Lanni & Company, P.C.
	345 Diversion St.
	Rochester, MI 48307
	Patrick Sweeney
	248-659-5300
	psweeney@croskeylanni.com
	*******7985

STATE			
	Program Manager	Alexander Ernst	MGCB
		(313) 456-4130	
		ernsta@michigan.gov	
	Contract Administrator	Joshua Wilson	DTMB
		(517) 284-7027	
		wilsonj31@michigan.gov	

CONTRACT SUMMARY

PARI-MUTUEL AUDITS OF RACE MEETS

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 23, 2014	December 31, 2016	2 - 1 Year	December 31, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME
NET 45	N/A

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	2 Years	☐	N/A	December 31, 2018

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$118,813.25	$71,670.00	$190,483.25

DESCRIPTION

Effective January 1, 2017, both option years available on this Contract are hereby exercised. The revised expiration date is December 31, 2018. Also, Attachment A Pricing for Northville Downs for the months of January 2017 - December 2018 is updated per the attached Budget - Contract Years 04 & 05.

Please note the Buyer/Contract Administrator has changed to Joshua Wilson (Section 2.021).

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

Croskey Lanni, PC

BUDGET – CONTRACT YEAR 04

TRACK: Northville Downs

PERCENTAGE PER DELIVERABLE	DELIVERABLE / DESCRIPTION	STATE FY	COST	SUB-TOTAL	TOTAL
70%	Monthly Status Reports:				
	▪ January 2017	FY ‘ 17	2,700		
	▪ February 2017	FY ‘ 17	2,700		
	▪ March 2017	FY ‘ 17	2,700		
	▪ April 2017	FY ‘ 17	2,700		
	▪ May 2017	FY ‘ 17	2,700		
	▪ June 2017	FY ‘ 17	2,700		
	▪ July 2017	FY ‘ 17	2,700		
	▪ August 2017	FY ‘ 17	2,700		
	▪ September 2017	FY ‘17	2,700	24,300	
State FY 2017 Cumulative Sub-Total / Contract Years 03 & 04				***45,230***	
	▪ Oct 2017	FY ‘18	2,700		
	▪ Nov 2017	FY ‘ 18	2,700		
	▪ Dec 2017	FY ‘18	2,700		
30%	Annual Pari-Mutuel Audit Report for 2017	FY ‘18	13,900		
State FY 2018 Cumulative Sub-Total / Contract Year 04:				**22,000**	
Total Contract Year 04:					**46,300**

Croskey Lanni, PC

BUDGET – CONTRACT YEAR 05

TRACK: Northville Downs

PERCENTAGE PER DELIVERABLE	DELIVERABLE / DESCRIPTION	STATE FY	COST	SUB-TOTAL	TOTAL
70%	Monthly Status Reports:				
	▪ January2018	FY ‘ 18	2,700		
	▪ February 2018	FY ‘ 18	2,700		
	▪ March 2018	FY ‘ 18	2,700		
	▪ April 2018	FY ‘ 18	2,700		
	▪ May 2018	FY ‘ 18	2,700		
	▪ June 2018	FY ‘ 18	2,700		
	▪ July 2018	FY ‘ 18	2,700		
	▪ August 2018	FY ‘ 18	2,700		
	▪ September 2018	FY ‘18	2,700	24,300	
State FY 2016 Cumulative Sub-Total / Contract Years 04 & 05				***46,300***	
	▪ Oct 2018	FY ‘19	2,700		
	▪ Nov 2018	FY ‘ 19	2,700		
	▪ Dec 2018	FY ‘19	2,700		
30%	Annual Pari-Mutuel Audit Report for 2018	FY ‘19	13,900		
State FY 2017 Cumulative Sub-Total / Contract Year 05:				**22,000**	
Total Contract Year 05:					**46,300**

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

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

CONTRACT NO. 071B4300098

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Croskey Lanni & Company, P.C.	Patrick Sweeney	psweeney@croskeylanni.com
345 Diversion St. Suite 400	TELEPHONE	CONTRACTOR #, MAIL CODE
Rochester, MI 48307	248-659-5300	**(2)38-2777985 (000)**

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MGCB	Alexander Ernst	313-456-4130	ernsta@michigan.gov
BUYER:	DTMB	Pam Platte	517-284-7022	plattep@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION:

MGCB: Pari-Mutuel Audits for Race Meets

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
2 yrs 8 mnths 8 days	April 23, 2014	December 31, 2016	2: one year
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
45 days	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ YES	☒ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #270R3200020**. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.**

Notice of Contract #: 071B4300098

FOR THE CONTRACTOR:	**FOR THE STATE:**
Croskey Lanni & Company, P.C	
Firm Name	Signature
	Jeff Brownlee Chief Procurement Officer
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

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

Contract No 071B4300098
Pari-Mutuel Audits of Race Meets for the
Michigan Gaming Control Board

Buyer Name: Pamela Platte
Buyer Direct Telephone Number: (517) 284-7022
Toll-Free Office Number: 855-MI-PURCH (855-647-8724)
E-Mail Address: plattep@michigan.gov

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ATTACHMENTS:

Attachment A – Price
Attachment B – Sample Daily Pari-Mutuel Audit Report
Attachment C – Sample Weekly Pari-Mutuel Audit Report
Attachment D – Department of Treasury Pari-Mutuel Racing Audit Program
Attachment E – Contact Information

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.

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

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 State's 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.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

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.

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

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

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

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

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

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

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

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

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

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

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for Pari-Mutuel Auditing Services for the 2014, 2015, and 2016 race meets, for the Michigan Gaming Control Board (MGCB), Horse Racing Section.

Race Tracks included in this Contract are:

Hazel Park Raceway:	1650 East 10 Mile Road, Hazel Park, MI 48030
Mount Pleasant Meadows:	500 North Mission Road, Mount Pleasant, MI 48858
Northville Downs:	301 South Center Street, Northville, MI 48167
Sports Creek Raceway:	4290 Morrish Road, Swartz Creek, MI 48473

1.012 Background

Public Act 279 of 1995, as amended, Section 23, requires the auditing of all pari-mutuel operations. Section 23 states, in part, that:

The auditing of pari-mutuel operations at each race meeting must be performed by a private auditing firm appointed by the racing commissioner. Daily audit reports on each day of pari-mutuel racing must be forwarded to the Racing Commissioner and the holder of the race meeting license not later than two business days after the day for which the report is made. Within 60 days following each race meeting, at least three copies of the pari-mutuel audit report for the entire race meeting must be forwarded to the racing commissioner and additional copies must be supplied to the State Treasurer and the holder of the race meeting license. The scope of the pari-mutuel audits must be established in specifications prepared by the State Treasurer and approved by the Racing Commissioner.

The auditors representing the State must have free and full access to the space or enclosure where the payoff prices are calculated, to the rooms and enclosures where the totalisator equipment is operated, and to the money rooms and cashier terminals, and must be responsible for verifying the accuracy of the calculations on which are based the payoff prices to the public and amount of racetrack commission, state tax and breakage, and for the amounts withheld by the holder of the race meeting license for payment of un-cashed tickets. The auditors at all times must have full and free access to all pari-mutuel records and all aspects, areas, and functions of the totalisator system, including but not limited to, all hardware, software, input and output data, documents and files. The auditors may audit internally and externally any or all parts and elements of the totalisator system whether on or off the site of the race meeting grounds. If the records are maintained in a machine-readable form (or electronic form), such as computer tapes or disks, copies must be made available to the auditors on request.

The auditors, in addition to their regular reports, must make prompt report to the Racing Commissioner, the State Treasurer, and the holder of the race meeting licenses, any irregularities or discrepancies which they may encounter during their auditing.

In addition to auditing the pari-mutuel operations, Contractor's auditors must include in their final reports, the daily attendance figures as supplied by the holder of the race meeting licensees.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor must audit the pari-mutuel operations at all performances of the race meet and must furnish reports in accordance with Public Act 279 of 1995, as amended, Section 23:

(A) The Contractor must use the Michigan Department of Treasury's Pari-Mutuel Audit Program (Attachment D), provided by the State, in performing the pari-mutuel audits specified in this Contract. Implementation of this audit program is not intended to restrict the use of professional judgment, in the event that the Contractor perceives a need for additional audit steps, sub-steps, or tasks to assure completion of the intended program goals, including: narrative audit reports; substantiating documentation; and testimony regarding findings, etc.

If the Contractor believes that additional audit steps are necessary, beyond those included in the provided audit program, then the Contractor must request approval from the State to modify the procedures provided in the audit program or its annual work plan.

(B) The following is considered out of scope: Audit of -

- Licensee financial records;
- Live and simulcast purse pool accounts;
- Horsemen's accounts.

1.022 Work and Deliverable

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

The following is a preliminary analysis of the major tasks involved for developing the end product of the Contract. The Contractor is not, however, constrained from supplementing this listing with additional steps, subtasks or elements deemed necessary, which permit the development of alternative approaches or the application of proprietary analytical techniques.

The Contractor must:

(A) Develop an overall plan that must serve as the basis for executing subsequent steps as the project progresses (i.e., Annual Work Plan), that clearly identifies Contractor's approach to attaining the objectives for this program. Included with this deliverable is the requirement to meet with the State's Contract Compliance Inspector (CCI) and Contract Manager (CM) no less than once per year to review the annual work plan development, etc.

(B) Not concurrently perform accounting or audit services, nor perform any other work, for any pari-mutuel track entity, or any party identified or targeted for investigation by the Department of Treasury or the MGCB, and must at all times avoid even an appearance of impropriety and/or conflict of interest, pursuant to MCL 431.30 §§4.4(3) which states in part that any employee or affiliate from the office of the Racing Commissioner "shall not participate in wagering permitted under this act or conducted by a person or an affiliate of a person licensed or applying for a license under this act."

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(C) Perform audits in accordance with the Pari-Mutuel Audit Program, as revised 11/02 (Attachment D); the Daily Pari-Mutuel Audit Report (prepared by the Race Track personnel), as revised 11/02 (Attachment B); the Weekly Audited Report Format, as revised 11/02 (Attachment C); the Rules and Orders of the Michigan Racing Commissioner; and U. S. generally accepted auditing standards.

(D) When applicable, adhere to the Association of Racing Commissioners International (ARCI) Model Rules, when these rules do not conflict with the Published Michigan Department of Treasury's Pari-Mutuel Audit Program, (Attachment D).

(E) Submit an Annual Pari-Mutuel Audit Report to the CCI 60 days after the completion of the 2014, 2015 and 2016, Live Racing Schedules.

(F) Have representatives from the Contractor present during the hours of the race meet in accordance with the Pari-Mutuel Audit Program (Attachment D).

(G) Testify / depose as directed by the CCI regarding audit(s).

(H) DELIVERABLES must include:

- Weekly Audit and Summary Report
- Monthly Summary Report
- Annual Pari-Mutuel Audit Report

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities
The Contractor must provide staffing resources for completion of the tasks and services as defined in this Contract. As part of its annual project/work-plan, the Contractor must also provide a detailed description of its key personnel, additional staff, and any consultants or subcontractors as related to the Contract, for final review and approval by the respective, assigned State CCI.

(A) Key Personnel:

Dick Shovan, CPA; Lead Auditor
John Boyle, CPA; Lead Auditor's Assistant in this Contract

Jacqueline Sup; Lead Accountant

The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. The Contractor must not remove any Key Personnel from their assigned roles for the Contract without the prior written consent of the State.

Contractor must provide not less than the following key-staff:

(1) Lead Auditor:

(a) This Key Personnel role must serve as the lead or primary contact for the State's CCI and Contract Manager, and must be responsible for:

- Directing other key, additional, and subcontractor staff;
- Issuing final Contractor approval for, and submitting to the State, all reports;
- Certifying as to the accuracy of all data calculations reported by the pari-mutuel tracks and reported tax payable to the State, and narrative summaries included in MGCB required reporting.

(b) Minimum education and experience for this position must include not less than:

- Possession of a Certified Public Accountant certification (CPA);
- Three years of professional experience auditing accounting, financial, and operations records as an Auditor.

(c) Minimum ability, expertise, and knowledge for this position must include not less than thorough:

- Knowledge and familiarity with business law, corporate finance, banking, administrative operations, and economics.

- Knowledge and familiarity with generally accepted professional accounting and auditing principles and practices.
- Knowledge and familiarity with government auditing standards.
- Knowledge and familiarity with procedures required that avoid subjecting the State to lawsuits for damages.
- Knowledge and familiarity with statutes, rules, and regulations applicable to Pari-mutuel racing.
- Ability to analyze the financial condition of business organizations or individuals by examining tax records, accounting statements, physical property inventories, and methods of operation, etc.
- Ability to interpret regulatory laws pertaining to public, private, or individual financial responsibility, e.g., Internal Revenue Service Tax Withholding Reports for payout, etc.
- Ability to recognize and assist in correcting errors in accounting practices, such as rounding, pay-out processes, totalisator processes, etc.
- Ability to obtain factual information relative to misrepresentation, improper use of proceeds, such as day-to-day outstanding tickets, receipt / ticket verification, excessive shortages and wagers, etc.
- Ability to defend audit findings before taxpayers, their representatives, and others.
- Ability to communicate effectively with others.
- Ability to input, maintain, and retrieve data from computer systems.
- Ability to maintain records and prepare reports and correspondence related to the work.

(2) Lead Accountant:

(a) This Key Personnel role must serve as the lead or primary contact for the State's CCI and Contract Manager, and must be responsible for:

- Back-up to and support to Lead Auditor, as directed.
- Site visits to the pari-mutuel tracks, to include personally observing and verifying day-to-day operations and procedures to assure licensure requirements are followed, such as money-room security, pari-mutuel office security, selling-line, etc.
- Gathering, compiling, and verifying data for MGCB required reports.

(b) Minimum education and experience for this position must include not less than:

- Possession of a bachelor's degree with 24 semester (or 36 term) credits in accounting.
- One year of professional accounting experience.

(c) Minimum ability, expertise, and knowledge for this position must include not less than thorough:

Knowledge and familiarity with business law, corporate finance, banking, administrative operations, and economics.
Knowledge and familiarity with generally accepted professional accounting and auditing principles and practices.

Ability to interpret regulatory laws pertaining to public, private, or individual financial responsibility, e.g., Internal Revenue Service Tax Withholding Reports for payout, etc.

Ability to recognize and assist in correcting errors in accounting practices, such as rounding, pay-out processes, totalisator processes, etc.

Ability to communicate effectively with others.
Ability to input, maintain, and retrieve data from computer systems.
Ability to maintain records and prepare reports and correspondence related to the work.

(B) Additional Staff (non-key):

Additional staff assignments are not considered key, but their roles are considered an integral complement to the roles, responsibilities, and abilities of the Contractor's Key Personnel. These roles may include information technology specialists, additional accountants, cash-counting staff, administrative support, etc. The Contractor must include a detailed description of these "additional roles" in its project work plan to be approved by the State's CCI, and explain how these integrally supportive roles will work with the key-staff positions.

(C) Subcontractor Staff:

Subcontractor roles are not considered key, but their roles are considered an integral complement to the roles, responsibilities, and abilities of the Contractor's Key Personnel. Subcontractors or consultants may fill one of the Contractor's Key Personnel roles. However, delegation of any portion of the services is subject to written, pre-approval by the State, and the Contractor must include a detailed description of these roles and responsibilities in its project work plan to be approved by the State's CCI, and explain how these integrally supportive roles will work with the Key Personnel positions.

1.032 State Staff, Roles, and Responsibilities
(A) Contract Compliance Inspector

The CCI is the officially designated MGCB representative who will oversee and have final authority to accept or reject work performed under the Contract. Specifically, the CCI is empowered to:

(1) Receive, evaluate, and approve any recommendations or work submitted by the Contractor to the State and / or its program partner(s).

(2) Meet with the Contractor prior to the start of any work to discuss and finalize the Contractor's project work plan.

(3) Issue final approval of the Contractor's work plan.

(4) Direct and require the reassignment of Contractor's personnel or Subcontractors.

(5) Receive and issue final approval for all required reports from the Contractor.

(6) Review and approve (via signature) invoices for work performed under the provisions of the Contract.

(7) Issue final acceptance and approval that all Contractor's work has been completed to the State's satisfaction.

(B) Contract Manager

The Contract Manager (CM) is the officially designated MGCB representative who will operationally manage the Contract. Specifically, the Contract Manager is empowered to:

(1) Have day-to-day oversight of the Contract.

(2) Recommend to the CCI whether the Contractor's work has been completed to the State's satisfaction.

(3) Receive, evaluate, and recommend approval or denial for any work (e.g., status or summary reports, invoices, etc.) submitted by the Contractor to the State and / or its program partner(s).

(4) Meet with the Contractor prior to the start of any work to discuss and finalize the Contractor's project work plan.

1.033 Other Roles and/or Responsibilities

The Contractor will be responsible to work and interact with the following groups and / or organizations, in order to obtain the information and statistical data necessary to complete the statutorily mandated audits; this list is not all inclusive:

- Race Licensees and their employees (i.e., track)
- Michigan Harness Horsemen's Association (MHHA)
- Michigan Horsemen's Benevolent Protection Agency (MHBPA)
- Great Lakes Quarter Horse Association (GLQHA)

1.040 Project Plan

1.041 Project Plan Management

(A) The Contractor must carry out this project under the direction and control of the MGCB – Horse Racing Section.

(B) There must be continuous liaising with the Contractor during the Contract and particularly during any process involving Race Licensees staff, MGCB staff, partners, other government officials, or any program partners or stakeholders.

(C) The annual project management plan (also referred to as the **annual work plan**) and the corresponding timeline or calendar must identify in detail:

(1) Anticipated approach for each of the duties or responsibilities associated with data gathering, analysis, and final completion of the required audits;

(2) Draft annual calendar;

(3) Narrative plan that describes how audits will be completed (e.g. onsite, announced, unannounced, etc.), which staff will complete audits for what pari-mutuel tracks, when, etc;

(4) Describe:

(a) Any methods, tools, processes, and resources (including resources from §1.033) it proposes to oversee the program audits; as well as,

(b) Its process to address potential issues, risks, or changes as they may arise (i.e., what circumstances could arise that could change the proposed plan, and the Contractor's proposed mitigation strategy to resolve, etc.); and,

(c) Detail of how the Contractor will keep the MGCB and CCI apprised of the project's progress (e.g., reporting from §1.042, etc.).

(d) The Contractor must identify and explain in writing to the CCI, any deviations from the required reporting schedule or the approved annual work plan (e.g., discrepancies not reconciled, staffing issues, failure to complete a required audit, etc.).

(e) The Contractor must respond to inquiries delegated by the State within five business days from the date received.

1.042 Reports
The following reports must be submitted in electronic format, via e-mail, according to the format of the Pari-Mutuel Audit Program (Attachment D), unless otherwise specified below or as otherwise directed by the State CCI:

(A) **Weekly Audit and Summary Report** of the daily performances must be submitted so that an electronic copy is received by the MGCB within two business days after the end of the week reported, and must include:

(1) Weekly Audit Report (Attachment C - citing week ending date);

(2) Race Meet Licensee's Daily Pari-mutuel Audit Reports (Attachment B - dates from and through);

(3) Weekly Summary (narrative), including:

- Dates and times of site visits, and summary description of event (e.g., simulcast, live, who interviewed, etc.);
- Reconciled discrepancies (for date(s)) and Licensee's respective revised daily pari-mutuel audit report(s) and/or discrepancy report, as applicable;
- Description of irregularities, discrepancies, or unusual occurrences (e.g.: shortages; overages; pay-outs; totalisator, etc.). However, any irregularity or discrepancy which is of an urgent nature must be reported immediately to both the CCI and CM via telephone, electronic-mail, and hard-copy mail, as soon as the Contractor is made aware.

(B) **Monthly Summary Report** (narrative) of the weekly audit reports, identifying:
(1) Beginning and ending dates of site visits, with description of events;

(2) Resolution of any pending discrepancies from weekly audit report(s);

(3) Resolution of any irregularities or unusual occurrences from weekly audit report(s);

(4) Monthly Invoice.

(C) **Annual Pari-Mutuel Audit Report**, two printed signed original copies with one electronic copy in portable document format (PDF) on CD-ROM or USB drive, and one electronic PDF copy sent via e-mail to the CCI and CM must be submitted within 60 calendar days following the meet, which reports on the entire race meets for each year the Contract is effective. Additionally, one printed, signed original copy must be sent to MGCB, Attn: Financial Services Section, P.O. Box 30786, Lansing, Michigan 48909.

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 the Contract:

(A) **Performance Criteria:**

- Completion of deliverables as directed;
- Completion of meetings and reports as directed;
- Adherence to project / work plan calendar;
- Accuracy of audit reports;

- Adherence to the Michigan Department of Treasury's Pari-Mutuel Program Audit Requirements (Attachment D);
- Adherence to the Association of Racing Commissioners International (RCI) *Model Rules and Requirements*, when not in conflict with the published Michigan Department of Treasury's *Pari-Mutuel Audit Requirements* (Attachment D), which shall take precedence;
- Adherence to *Generally Accepted Auditing Standards* (GAAS), when applicable.

(B) Effectiveness Criteria:

Communication:
Clearly communicate information to non-financial audiences (i.e., cohesiveness and clarity in presentations, interviews, and all communications with US governmental staff, State Executive branch staff, MGCB staff, licensee and its employees, and the general public, etc. [i.e., communications are consistently audience appropriate]);

Clearly communicate and summarize critical elements of any irregularities or discrepancies, etc.

Program:
Report(s) will assist in the regulation, promotion, and protection of pari-mutuel racing in Michigan, including the reporting and analysis of any unusual occurrences or observations during the audit process that could compromise the integrity of the program or create liability for the State.

1.052 Final Acceptance
Acceptance of deliverables is defined as State approval of Contractor invoices.

1.060 Proposal Pricing

1.061 Proposal Pricing

(A) Invoice Process

(1) Contractor must maintain a record system that documents the service(s) and item(s), as defined in this Contract, and delivered during the term of the Contract; these records must also document the specific expenses billed to the State under the Contract.

(2) An "invoice" must accurately represent the service(s) or item(s) delivered, the cost by item type, and the total amount being claimed, and must be submitted to the State, within 30-days from the end of the billing cycle or period as approved by the MGCB's CCI.

(3) Any Contractor expenses for travel outside of routine work as required to fulfill the terms of the description of work and the reporting requirements must be preapproved by the State's CCI. The State will reimburse Contractor only for applicable travel expenses, at an amount which does not exceed its published rate schedules, pursuant to and in accordance with the State of Michigan's Administrative Guide POLICY 0420: *Travel* (Issued January 1, 1994), which states in part that authorized non-State employee consultants, advisors, (and contractors) who incur travel expenses in connection with official State business, must comply with the *Standardized Travel Regulations* and associated rate schedules, per the Michigan Constitution, Article XI, §5 and *The Management and Budget Act*, Public Act 431 of 1984, as amended, §217; currently approved expenses and rates may be obtained from: http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html

(4) For the month of September, any billings or invoices must be submitted as directed by the State's assigned Buyer, Contract Administrator, CCI, or Contract Manager, to meet fiscal year-end closing due dates and / or any other requirements.

(5) If a billing is not received as set forth above, no payment shall be made by the State for that billing period unless an exception is specifically authorized by the respective Department director or her/his delegated representative.

(6) In no event shall the State make payment to the Contractor for billings submitted more than 90-days after the end of the scheduled billing period described above, without approval from the respective State Department Director or his/her delegated representative.

(B) Reimbursement and Payment Method
See Attachment A for Price and payment method.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

Correct invoices, pursuant to § 1.061, will be due and payable by the State within 45 days after the State's approval of the invoice for delivery of goods/services (whichever is later), in accordance with the State's standard payment procedure.

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

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

1.064 Reserved

1.070 Additional Requirements

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term
The Contract is for a period of approximately two years, eight months, and eight days beginning April 23, 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, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

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

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

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

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

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

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

2.011 No Waiver of Default
If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

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

2.020 Contract Administration

2.021 Issuing Office
The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and Michigan Gaming Control Board (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:

Pamela Platte, Buyer
Procurement
Department of Technology, Management and Budget
Constitution Hall, 1st Floor
PO Box 30026
Lansing, MI 48909
plattep@michigan.gov
(517) 284-7022

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 the Michigan Gaming Control Board, 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:

Alexander Ernst, Manager
Michigan Gaming Control Board
Gaming & Horse Racing Regulation Division
3062 W. Grand Blvd., Suite L-700
Detroit, MI 48202
Ernsta@michigan.gov
Phone: (313) 456-4130
Fax: (313) 456-2864

2.023 Contract Manager
The following individual will oversee the project:

Mike Cady, Pari-Mutuel Coordinator
Michigan Gaming Control Board
3062 W. Grand Blvd., Suite L-700
Detroit, MI 48202
Cadym9@michigan.gov
Phone: (313) 456-4173
Fax: (313) 456-2864

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

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

Change Requests:

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

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

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices
Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

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

2.027 Relationship of the Parties
The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors 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 the Contract.

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

2.029 Assignments
(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

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

2.030 General Provisions

2.031 Reserved

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

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

2.038 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 the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

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

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

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

2.044 Invoicing and Payment – In General

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

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

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

(d) Contract Payment Schedule

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

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

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

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

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply

with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement
Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at http://www.cpexpress.state.mi.us. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

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

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

2.060 Contract Management

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

2.062 Contractor Key Personnel
(a) The Contractor must provide the CCI with the names of the Key Personnel.

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

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

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

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

(f) Liquidated damages may be assessed by the State for Unauthorized Removal as provided in Section 2.243, Liquidated Damages.

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

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. 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 Contractor Return of State Equipment/Resources

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

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

2.070 Subcontracting by Contractor

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

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

2.073 Subcontractor Bound to Contract
In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

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

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

2.080 State Responsibilities

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

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

2.090 Security

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

2.100 Confidentiality

2.101 Confidentiality
Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information
The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to

maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Reserved

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

2.105 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 the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours after becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

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 have the right to enter the Contractor's premises or any other places where work is being performed in relation to the 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 the Contract for a period of 7 years after the Contractor performs any work under the 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 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to the Contract any time during the Audit Period. 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 the 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 the Contract. The financial and accounting records associated with the 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 the 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 the 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

2.121 Warranties and Representations
The Contractor represents and warrants:

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

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

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

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

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

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

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

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

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

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

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

2.125 Reserved

2.126 Reserved

2.127 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 the 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 the 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 the 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**

☐ **(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 the 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 Code Indemnification
The Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

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

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

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must

terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

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

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available.

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

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

2.160 Reserved

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities
If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 120 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

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

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

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

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

2.176 State Transition Responsibilities
In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
(a) Reconciling all accounts between the State and the Contractor;
(b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders
The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

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

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

2.190 Dispute Resolution

2.191 In General
Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.

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

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

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

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

2.193 Injunctive Relief

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor 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 the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., 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 the Contract.

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

2.203 Workplace Safety and Discriminatory Harassment
In performing Services for the State, the Contractor and any Subcontractor must comply with all applicable state and federal laws.

2.204 Reserved

2.210 Governing Law

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

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

2.213 Jurisdiction
Any dispute arising from the Contract must be resolved in the State of Michigan 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. .

2.220 Limitation of Liability

2.221 Limitation of Liability
Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation
(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public

entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

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

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.

(2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 Reserved

2.233 Bankruptcy and Insolvency

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

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

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

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

2.242 Reserved

2.243 Liquidated Damages

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

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 the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Reserved

2.260 Ownership

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

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

2.263 Rights in Data
(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information 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 Ownership of Materials
The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

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

2.272 Acceptable Use Policy
To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

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

2.274 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 Reserved

2.290 Reserved

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials
Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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

Attachment A, Price

(1) Work and Deliverables (**routine audit functions**):

TRACK	QUOTE PER YEAR	TOTAL QUOTE [3 BASE YEARS]
NORTHVILLE DOWNS	2014 $31,552.25 2015 $43,201.00 2016 $44,060.00	$118,813.25
	CUMULATIVE TOTAL QUOTE:	$118,813.25

Contractor invoicing and State-payment will be made as a **percentage** (of total quotation) **per deliverable, per track,** and Contractor must invoice the State monthly, according to the following annual schedule:

BUDGET – CONTRACT 04/23/2014 – 12/31/2016) [TWO YEARS, EIGHT MONTHS, AND EIGHT DAYS]

BUDGET – CONTRACT YEAR 01

TRACK: Northville Downs

PERCENTAGE PER DELIVERABLE	DELIVERABLE / DESCRIPTION	STATE FY	COST	SUB-TOTAL	TOTAL
70%	Monthly Status Reports:				
	▪				
	▪ April 2014	FY ‘ 14	629.25		
	▪ May 2014	FY ‘ 14	2,517.00		
	▪ June 2014	FY ‘ 14	2,517.00		
	▪ July 2014	FY ‘14	2,517.00		
	▪ August 2014	FY ‘14	2,517.00		
	▪ September 2014	FY ‘ 14	2,517.00	13,214.25	
State FY 2014 Cumulative Sub-Total / Contract Year 01:				**13,214.25**	
	▪ Oct 2014	FY ‘15	2,517.00		
	▪ Nov 2014	FY ‘15	2,517.00		
	▪ Dec 2014	FY ‘15	2,517.00		
30%	Annual Pari-Mutuel Audit Report for 2014	FY ‘15	10,787.00		
State FY 2015 Cumulative Sub-Total / Contract Year 01:				**18,338.00**	
Total Contract Year 01:					**$31,552.25**

BUDGET – CONTRACT YEAR 02

TRACK: Northville Downs

PERCENTAGE PER DELIVERABLE	DELIVERABLE / DESCRIPTION	STATE FY	COST	SUB-TOTAL	TOTAL
70%	Monthly Status Reports:				
	▪ January 2015	FY ‘ 15	2,520.00		
	▪ February 2015	FY ‘ 15	2,520.00		
	▪ March 2015	FY ‘ 15	2,520.00		
	▪ April 2015	FY ‘ 15	2,520.00		
	▪ May 2015	FY ‘ 15	2,520.00		
	▪ June 2015	FY ‘ 15	2,520.00		
	▪ July 2015	FY ‘ 15	2,520.00		
	▪ August 2015	FY ‘ 15	2,520.00		
	▪ September 2015	FY ‘ 15	2,520.00	22,680.00	
State FY 2015 Cumulative Sub-Total / Contract Years 01 & 02:				**41,018.00**	
	▪ Oct 2015	FY ‘16	2,520.00		
	▪ Nov 2015	FY ‘ 16	2,520.00		
	▪ Dec 2015	FY ‘16	2,520.00		
30%	Annual Pari-Mutuel Audit Report for 2015	FY ‘16	12,961.00		
State FY 2016 Cumulative Sub-Total / Contract Year 02:				**20,521.00**	
Total Contract Year 02:					**$43,201.00**

BUDGET – CONTRACT YEAR 03 TRACK: Northville Downs					
PERCENTAGE PER DELIVERABLE	DELIVERABLE / DESCRIPTION	STATE FY	COST	SUB-TOTAL	TOTAL
70%	Monthly Status Reports:				
	▪ January2016	FY ‘ 16	2,570.00		
	▪ February 2016	FY ‘ 16	2,570.00		
	▪ March 2016	FY ‘ 16	2,570.00		
	▪ April 2016	FY ‘ 16	2,570.00		
	▪ May 2016	FY ‘ 16	2,570.00		
	▪ June 2016	FY ‘ 16	2,570.00		
	▪ July 2016	FY ‘ 16	2,570.00		
	▪ August 2016	FY ‘ 16	2,570.00		
	▪ September 2016	FY ‘16	2,570.00	23,130.00	
State FY 2016 Cumulative Sub-Total / Contract Years 02 & 03				**43,651.00**	
	▪ Oct 2016	FY ‘17	2,570.00		
	▪ Nov 2016	FY ‘ 17	2,570.00		
	▪ Dec 2016	FY ‘17	2,570.00		
30%	Annual Pari-Mutuel Audit Report for 2016	FY ‘17	13,220.00		
State FY 2017 Cumulative Sub-Total / Contract Year 03:				**20,930.00**	
Total Contract Year 03:					**$44,060.00**

(2) Work and Deliverables (**Expert Testimony**):
Contractor invoicing and State-payment will be made for expert testimony related to this program as a **rate per unit of service:**

Service Description	Unit Definition	Estimated Annual Volume	Rate per Unit / Quote
Lead Auditor must provide expert testimony regarding any findings which s/he certifies, if required by the State.	Expert testimony shall be defined as 60-minutes of face-to-face testimony.	None	$ 250.00
Lead Accountant must provide expert testimony regarding any findings which s/he certifies, if required by the State.	Expert testimony shall be defined as 60-minutes of face-to-face testimony.	None	$ 185.00

ATTACHMENT B

ANY RACETRACK
DAILY PARI-MUTUEL AUDIT REPORT
PURSUANT TO SECTIONS 15(2) AND 23-1 OF THE HORSE RACING LAW OF 1995

DAY: _____

DATE: _____

	DAY #	DAY #	
AMOUNT WAGERED:	SIMULCAST	LIVE ON-SITE	TOTAL
WIN-PLACE-SHOW WAGERS*	0	0	0
MULTIPLE WAGERS*	0	0	0
TOTAL AMOUNT WAGERED	0	0	0
DISTRIBUTION OF POOL:			
AMOUNT PAYABLE TO PUBLIC			
PAYMENTS TO WINNERS	0	0	0
CARRYOVER/(PAID)	0	0	0
TOTAL PAYABLE TO PUBLIC	0	0	0
TRACK SETTLEMENTS	0	0	0
BREAKAGE DUE LOCAL GOVERNMENT	0	0	0
HOST TRACK COMMISSION	0	0	0
STATE RACING TAX @ 3.5%	0	0	0
RACING LICENSEE NET COMMISSION	0	0	0
TOTAL DISTRIBUTION	0	0	0

ATTENDANCE	
PAID	0
COMP	0
TOTAL ATTENDANCE	0

INCOME TAX WITHHELD	
STATE OF MICHIGAN	
FEDERAL	
TOTAL TAXES WITHHELD	

PURSE DISTRIBUTION:

TOTAL PURSES PAID EXCEPT STATE SUPPLEMENTS	
STATE SUPPLEMENTS (MICHIGAN-BRED RACES)	
GROSS DISTRIBUTION	

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE EXAMINED THIS RETURN AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE.

PRINTED NAME OF PREPARER: _____

SIGNATURE OF PREPARER: _____

TITLE OF PREPARER: _____

ATTACHMENT B

RACE TRACK
WEEKLY AUDIT REPORT
PURSUANT TO SECTIONS 15(2) AND 23-1 OF
THE HORSE RACING LAW OF 1995

Simulcast Week
For the week ended:

Date:

SENDING TRACK	HOST %	# RACES	W-P-S	MULTIPLE/ SPL/SWEEP	TOTAL	PAYABLE TO PUBLIC	PAYOUT SETTLEMENT	GROSS	HOST	STATE TAX	NET	NET BREAKAGE	TOTAL DISTRIBUTION	HORSEMEN'S PURSE
Live Races														
Previous weeks YTD - Live														
Year to date totals - Live														
INTERTRACK-SIMULCAST- MEMO ITEM ONLY														
Standardbred - Current Week														
Previous YTD Standardbred														
Total Intertrack-Standardbred YTD														
INTERTRACK-THOROUGHBRED - MEMO ITEM ONLY														
Thoroughbred - Current Week														
Previous YTD Thoroughbred														
Total Intertrack-Thoroughbred YTD														
STANDARDBRED														
Hazel Park	3.00%													
Hoosier Park	3.00%													
Meadowlands (H)	3.00%													
Meadows	3.00%													
Northfield Park	3.00%													
Freehold	3.00%													
Total simulcast standardbred														
Previous Year to Date-Standardbred														
Total simulcast standardbred YTD														
THOROUGHBRED														
Bay Meadows	3.00%													
Belmont	3.00%													
Calder	3.25%													
Churchill	3.75%													
Hollywood Park	4.25%													
Charlestown	3.00%													
Monmouth	3.00%													
Pimlico	3.00%													
Remington	3.00%													
Great Lakes Downs	3.00%													
Total simulcast throughbred														
Previous Year to Date-Throughbred														
Total simulcast throughbred YTD														

ORIGIN:
Michigan intertrack
Interstate
Total simulcast
Previous weeks YTD - Simulcast
Year to date totals - Simulcast

Total simulcast/live this week
Total simulcast/live YTD

Average Daily Handle-Week #

Average Daily Handle-YTD

CONTRACT #071B4300098

ATTACHMENT C

ANY RACETRACK
WEEKLY AUDIT REPORT
PURSUANT TO SECTIONS 15(2) AND 23-1 OF THE HORSE RACING LAW OF 1995

FOR THE WEEK ENDED:

DATE PREPARED:

TOTAL RACING DAYS:	SIMULCAST	LIVE
LAST WEEK TOTAL		
CURRENT WEEK		
YEAR TO DATE TOTAL		

	WEEK #		WEEK #		WEEK #	
AMOUNT WAGERED:	SIMULCAST		LIVE		TOTAL	
WIN-PLACE-SHOW WAGERS	0		0		0	0%
MULTIPLE WAGERS	0		0		0	0%
TOTAL AMOUNT WAGERED	0		0		0	100%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
DISTRIBUTION OF POOL:						
PAYMENTS TO WINNERS	0		0		0	0%
CARRYOVER/(PAID)	0		0		0	0%
TOTAL PAYABLE TO PUBLIC	0		0		0	0%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
TRACK SETTLEMENTS	0		0		0	0%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
BREAKAGE DUE LOCAL GOVERNMENT	0		0		0	0%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
HOST TRACK COMMISSION	0	(1)			0	0%
PRIOR CUMULATIVE TO DATE	0				0	
TOTAL MEET TO DATE	0				0	
STATE RACING TAX @ 3.5%	0				0	
PRIOR CUMULATIVE TO DATE	0				0	
TOTAL MEET TO DATE	0				0	
RACING LICENSEE COMMISSION	0	(1)	0	(1)	0	0%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
TOTAL DISTRIBUTION	0		0		0	100%
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	
HORSEMEN'S PURSE POOL	0	(1)	0	(1)	0	
PRIOR CUMULATIVE TO DATE	0		0		0	
TOTAL MEET TO DATE	0		0		0	

	CURRENT	YTD		INCOME TAX WITHHELD	CURRENT	YTD
PAID	0	0	(1)	STATE OF MICHIGAN		-
COMP	0	0		FEDERAL		
TOTAL ATTENDANCE	0	0		TOTAL TAXES WITHHELD		

(1) These items have not been subjected to the Agreed Upon Procedures performed on the balance of the Report.

Certified Public Accountants

ATTACHMENT D

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
Local Audit and Finance Division

PARI-MUTUEL RACING AUDIT PROGRAM

Under the Authority of the
HORSE RACING LAW OF 1995

TABLE OF CONTENTS

Introduction

- Reports Required
- Audit Scope
- Rules of the Racing Commissioner
- Escheats Law for Racing Meets
- Audit Program Introduction
- Audit Program
- Pre-Performance
- To Be Performed Throughout Performance
- Post-Performance
- Various Periodic Procedures
- One Time Procedure

Attachment A—Policy Requirements

INTRODUCTION

The Local Audit and Finance Division of the Michigan Department of Treasury has been given the responsibility for implementing the audit requirements of the Horse Racing Law of 1995. The pertinent sections of the Horse Racing Law of 1995 are included as Attachment A in this Audit Guide. As stated in Section 23 (1) of the Act:

The auditing of pari-mutuel operations at each race meeting shall be performed by a private auditing firm appointed by the state treasurer and approved by the racing commissioner.

The expense of pari-mutuel audits shall be paid by the state as part of the state treasurer's budget.

Daily pari-mutuel audit reports on each day of pari-mutuel racing shall be forwarded to the racing commissioner by the holder of the race meeting license not later than 2 business days after the day for which the report is made.

Reports required include:

a. **Daily Pari-Mutuel Audit Reports** are to be prepared and signed by the race track and submitted (via electronic mail) to the CPA for audit and accumulation purposes (one copy), to the MGCB (one copy) and the Michigan Harness Horsemen's Association (one copy). **The CPA will accumulate and summarize the daily reports and prepare a weekly audit report.**

b. **The Weekly Audit Report** must be submitted by the CPA to the MGCB (one copy), each contracted race meeting licensee (one copy), the Michigan Harness Horsemen's Association (one copy), the Michigan HBPA, Inc. (one copy), and the Great Lakes Quarter Horse Association (one copy) not later than 2 business days after the last day of the weekly reporting period for which the report is made. The last day of the weekly reporting period is Sunday or, if the track is open less than 7 days, the day before the day the track reopens.

Note: The weekly reports may be emailed to the MGCB office within two business days following the last day of the weekly reporting period for which the report is made.

c. A **Report of Irregularities or Discrepancies** regarding any irregularities or discrepancies encountered during the daily audits must be submitted (one each) to the MGCB CCI and to the race meeting licensee. A verbal report on the problem must be made immediately, with a written report submitted as soon as possible, but no later than 10 business days.

d. An **Audit Report of Pari-Mutuel Operations** covering the entire race meet, must be submitted within 60 days of the end of the meet to the MGCB (three copies), and the race meeting licensee (copies as requested).

Sample daily and weekly audit reports are included as Attachments B and C of the Audit Guide.

Audit Scope

The scope of the pari-mutuel audits shall be established in specifications prepared by the state treasurer and approved by the MGCB.

The CPA shall be in attendance at the race track at least two days of the week, **during the period in which live and/or simulcast races are in process.** Those days may be at the discretion of the CPA.

Rules of the Racing Commissioner

Rules promulgated by the Racing Commissioner by authority of the Racing Law include Rules 431.1001 through 431.4290, effective May 31, 1985. Rules of particular interest to the pari-mutuel auditor are described here:

Rule 431.1145(3) prohibits wagering on a race at the meeting by the pari-mutuel auditors, stewards, mutuel department managers, mutuel department calculating room employees, totalisator computer programmers, or technicians.

Rule 431.2001 - .2120 address the pari-mutuel function, including definitions, ticket sales, types of wagers and pay-off calculations.

Rule 431.2035 provides for the approval of the totalisator system by the Racing Commissioner (see also Rule 431.1095(20).

Escheats Law for Racing Meets

PA 90 of 1951, as amended, Sec. 2. For the calendar year 1998 and each year thereafter, all funds held by any licensee for the payment of outstanding winning tickets for any race meeting conducted under the horse racing law of 1995, 1995 PA 279, MCL 431.301 to 431.336, which have not been claimed by the owner of those funds within 60 days after the close of the race meeting, shall be retained by the licensee and distributed as follows:

a) If the licensee is a standardbred race meeting licensee:
   (i) Fifty percent of the funds shall be retained by the licensee.
   (ii) Fifty percent of the funds shall be deposited into the Michigan Agriculture equine fund created in section 20(3) of the horse racing law of 1995, 1995 PA 279, MCL 431.320, and designated for standardbred programs described in section 20(5)(a), (c), (e), (h), and (i) of the horse racing law of 1995, 1995 PA 279, MCL 431.320.

b) If the licensee is a thoroughbred race meeting licensee, then for calendar year 1999 and every year thereafter:
   (i) Fifty percent of the funds shall be retained by the licensee.
   (ii) Fifty percent of the funds shall be deposited in the Michigan Agriculture equine fund established in section 20(3) of the horse racing law of 1995, 1995 PA 279, MCL 431.320, and designated for thoroughbred programs described in section 20(6)(a) to (e) of the horse racing law of 1995, 1995 PA 279, MCL 431.320.

c) If the licensee is a light horse racing meeting licensee:
   (i) Fifty percent of the funds shall be retained by the licensee.
   (ii) Fifty percent of the funds shall be deposited in the Michigan Agriculture equine fund established in section 20(3) of the horse racing law of 1995, 1995 PA 279, MCL 431.320, and designated for light horse programs described in section 20(7), (8), and (9) of the horse racing law of 1995, 1995 PA 279, MCL 431.320.

Audit Program

The audit program is to be used at all race tracks. The size, location, management and local procedures and reports may affect the audit procedures necessary at an individual track. Additional reporting is necessary for those race tracks that have signal exports. The auditor is expected to use professional judgment in determining if a particular procedure is applicable at a specific track or if track reports identified in the Program are not prepared or obtainable and alternative procedures or report testing are necessary.

If changes are made in the audit program, the auditor is required to document in the workpapers the need for the change and the alternatives used. Material changes in the Program must be reported to and approved by the MGCB.

Pre-Performance

Association Name: Page 1

	Initials	W/P Reference
I. Treasurer's Report and Outs Summary internal consistency testing A. Obtain the manually prepared treasurer's reports from the previous week's performances and: 1. Note that the reports are signed and otherwise properly completed as to identifying information: dates, days, and performance numbers. 2. Agree total of receipts columns with total of disbursements columns. They must be equal; if not, determine why and provide a written explanation. 3. Test clerical accuracy by footing the respective columns. 4. Agree "cash on-hand" (i.e. cash held at track) balance per previous treasurer's report to beginning cash balance per next report throughout week. 5. Agree "cash on-hand" to total cash indicated on the form (e.g. money room balance sheet) which records cash counted in the money room at the end of the same week. B. For overage/shortage discrepancy and totalisator adjustment: 1. Agree to related source documents for this activity on test basis. 2. Review for large and/or unusual amounts. 3. Investigate large and/or unusual amounts with mutuel manager. Document in writing the results of your findings.		

Pre-Performance

Association Name: Page 2

	Initials	W/P Reference
C. Obtain the totalisator Daily Outs Balance Report of OUTS activity during the previous week's performances and: 1. Agree amounts of OUTS cashed each day and new OUTS created each day to the manually prepared treasurer's report (tested in Step A). 2. Agree beginning balance to ending balance per report for each preceding performance. 3. Review activity for unusual items (e.g. adjustments) and discuss any noted with Mutuel Manager. D. Obtain the necessary totalisator report(s) for each day's performance and agree commissions and surplus to the treasurer's reports. II. Withheld taxes verification and reporting A. Obtain the IRS Tax Report for each day and: 1. Identify any wagering transaction paying $5,000 or more. 2. Verify that the proper State and Federal income tax withholding is deducted from such wagers. 3. Include the sum of the State and Federal income tax withholding in the Weekly Audit Report. B. Verify the daily withholding activity to the Treasurer's report.		

Pre-Performance

Association Name: Page 3

	Initials	W/P Reference
III. Prepare the Weekly Audit Report in the current format. A. Obtain the Reconciliation Report, or other necessary reports from the tote operator, for each day and verify the "Daily Pari-Mutuel Audit Reports" prepared by the track licensee. 1. Enter individual track daily totals for Sales, Refunds, Commission, Breakage, Runner Pay and Settlements to spreadsheet software. 2. Obtain Host commission from Mutuel Balance Sheet for each track, each day. 3. Reconcile weekly audit report to Licensee's prepared daily pari-mutuel audit report. B. Reconcile the licensees "Daily Pari-Mutuel Audit Reports" for each day to each other and to the Treasurer's Reports. C. Agree the State racing tax from the daily pari-mutuel audit report to the Treasurer's Report. Footnote any differences in the report. D. Obtain the totalisator Reconciliation report for the performance. 1. Record pool totals for the performance onto the performance summary form. 2. Using the pool information recorded in Step 1, calculate total commission and the allocation of commission and breaks due the Association and the State assuring that any "minus pools" are treated properly. 3. Agree commission calculated in Step 1 to the totalisator summary report. 4. Obtain and record attendance.		

Pre-Performance

Association Name: Page 4

	Initials	W/P Reference
E. Mail copies of the Weekly Audit Report, to be received within two business days after end of the week to: 1. Michigan Gaming Control Board, 3062 W. Grand Blvd., Suite L-700 Detroit, MI 48202 (two copies) 2. **Each Race Licensee,** to their designated recipient (one copy) 3. Michigan Harness Horsemen's Association, P.O. Box 349 Okemos, MI 48805 (one copy) 4. Michigan HBPA, Inc. 841 North Latson Howell, MI 49444 (one copy) 5. Great Lakes Quarter Horse Association, 10875 Jackson Road Clarksville, MI 48815 (one copy) *Note*: Weekly reports may be emailed or faxed to the MGCB office. Signed original weekly reports accompanied with the respective daily reports must be mailed by the beginning of each month for the preceding month to the MGCB if the reports are emailed. See attachment D for email/fax addresses.		

To Be Performed Throughout the Performance

Association Name: Page 1

	Initials	W/P Reference
I. Teller/Terminal Activity testing A. During each performance at which you are present, observe _____ complete selling lines and record identification numbers of terminals operating and of those not operating (Note: Rotate lines observed so all lines will be tested during a period of _____). Be sure to record the race number during which each observation is made as this may be critical in follow-up work. B. At "stop betting" for _____ live races each week, record from the tote board (or screens) displayed to the wagering public the final approximate odds for each runner in the WIN pool, the order of finish and pay-off price for each winner in win, place, show, and feature pools. C. Ascertain that pay-off prices recorded in Step B are reasonable based upon final approximate odds displayed and recorded in Step B.		

Post-Performance

Association Name: Page 1

	Initials	W/P Reference
I. Ascertain that the following totalisator "shutdown" procedures have been performed: A. All log tapes/files and OUTS tapes/files are stored in a secured cabinet. B. Computer CPU memory has been cleared of betting programs (ask the tote operator). AND II. Obtain a copy of the totalisator operator's console log for the performance and: A. Review for unusual items B. Discuss unusual items with the totalisator manager and seek a satisfactory resolution. C. Verify that all auditor-requested reports, including those from the "Various Periodic Procedures" section of this guide, are properly included in the console activity log, particularly "Outs" listings. OR III. Query Mutuel manager and tote manager for unusual activities. NOTE: Perform either: step I and II or perform only step III		

Various Periodic Procedures

The objectives of this program are to ascertain through periodic tests that: (1) recorded cashing activity is supported by cashed tickets; (2) recorded cancellations are supported by cancelled tickets; and (3) recorded pay-off prices are calculated properly and agree with those displayed to the patrons.

Due to the interrelationships of these elements, tests of each should be conducted using data from the same wagering period (i.e., performance and race) and subject (i.e. terminal operator). Accordingly, select _____ performance(s), _____ races within the selected performance(s), and _____ terminal operator(s) for testing. Record below basis of selection and other identifying information.

Association Name: Page 1

	Initials	W/P Reference
I. Obtain the following reports and documents for testing:		
A. Transaction Search report of terminal operator activity. (Note: These reports include all transactions initiated by a terminal operator - sales, cashes, cancellations, etc. - and related ticket numbers.)		
B. Teller Balance report of terminal operator activity which includes sales, cancellations, cashes, draws, returns, etc. for all terminal operators.		
C. Required performance/race summary reports of handle, commissions, pay-off, etc.		
D. Race "final reports" which include order-of-finish and pay-off prices by race.		
E. Summary totalisator report of all ticket cancellations during the performance(s).		
F. Report of tickets/bets cashed during the performance(s).		
G. Summary report of activity of OUTS.		
H. Packets/bundles of paid/cancelled tickets for terminal operators/performances selected for testing.		

Various Periodic Procedures

Association Name: Page 2

	Initials	W/P Reference
II. <u>Cashed and cancelled tickets</u> - for the performance(s) selected for testing, perform the following:		
A. Test clerical accuracy of the Teller Balance report of terminal operator activity.		
B. Agree total sales per the Teller Balance report tested in Step IIA to the respective performance summary report.		
C. For selected terminal operators:		
1. Obtain the report of tickets/bets cashed, and agree total to: The Teller Balance report tested in Step II A and the Transaction Search report in Step I A.		
2. Agree cashed tickets, including ticket identification numbers in the bundle to the "special reports."		
3. Agree cancelled tickets, including ticket identification numbers to the "special reports."		
4. Trace _____ cashed tickets per the "special reports" to the report of tickets/bets cashed during the performance, agreeing: date, ticket number, terminal number amount, pool, and runner number(s).		
5. Trace cancelled tickets per the "special reports" to the summary report of all tickets cancelled during the performance, agreeing: terminal number, ticket number and amount.		
A. Review the summary report of all tickets cancelled for type of cancellation indicated (e.g. operator vs. supervisor, read electronically vs. manual entry and tote cancellation) and:		
E. Note frequency of manual and supervisor cancellations and <u>all</u> tote cancellations.		
F. Discuss findings in Step D. 1. With Mutuel Manager and Tote Manager to satisfactory resolution, particularly tote cancellations.		

Various Periodic Procedures

Association Name: Page 3

	Initials	W/P Reference
III. <u>OUTS</u> – For the performance(s) tested in Step II above: A. Obtain the summary of activity in OUTS and: 1. Agree "OUTS paid" and "new OUTS created" per the Summary to the respective manually prepared treasurer's report. 2. Agree total winning tickets for the current performance to "total public pay" per the performance Summary report of handle, commissions, etc. 3. Agree previous OUTS paid and new OUTS paid to the report of tickets/bets cashed. 4. Agree previous OUTS balance to the ending OUTS balance per the summary of activity in OUTS for the previous performance. B. Obtain the report of tickets/bets cashed and: 1. Select _____ recorded OUTS payments for testing (Note: record basis of selection, including dates and ticket numbers). 2. For each item selected in Step B 1, inspect cashed ticket (in ticket bundles), agreeing the following information (as applicable) per each ticket, recordings in report of tickets/bets cashed and official records of winners: a. Ticket number b. Terminal number c. Date d. Pay-off amount e. Race number f. Pool g. Winner(s)		

Various Periodic Procedures

Association Name: Page 4

	Initials	W/P Reference
3. Pay-off prices select _____ races during the same performance(s) tested in Step II, and test the calculation of all pay-off prices, including total breakage.		
IV. <u>Cash count and reconciliation</u> - On a surprise basis, Conduct an observation and confirmation of the count of cash in the main money room, in the morning after the end of a performance as follows:		
1. Be present in the main money room before "mini-bankers" and terminal operators begin forwarding performance end cash to the main money room.		
2. Confirm and record the count of cash on hand before "mini-bankers" and/or terminal operators return.		
3. Observe and confirm the count of all cash returned that is to be counted immediately after the performance (e.g. terminal operators' ending cash retained in pouches) and perform the following procedures:		
a. Require all such cash to be placed in a sealable container or safe.		
b. Seal the container or safe with your own seal to assure any opening will be readily detectable.		
c. Instruct the Head Cashier/Money Room Manager not to open the sealed container or safe until you are present.		
4. Before leaving the money room inquire of the Head Cashier and all "mini-bankers" as to whether there is any other cash (e.g. loads which they may retain at their respective locations), and document their responses.		
5. Summarize the counts of cash obtained in Steps 1-3.		

Various Periodic Procedures

Association Name: Page 5

	Initials	W/P Reference
V. Obtain a complete set of reports produced at the end of the Performance. Be certain the following reports are included: 1. Summary report of terminal operator activity which includes sales, cancellations, cashes, draws, returns, ending cash balance, shortage/overage, etc. for all operators. 2. Summary report of activity in OUTS. 3. Performance summary report of handle, commission, breakage, pay, etc. A. During the next performance, test the reconciliation of Beginning cash, wagering transaction results and ending Cash as follows: 1. Test the manually prepared treasurer's report for the performance in accordance with Steps A-C, Section I of the Pre-Performance Program 2. Reconcile sending cash to stated bank roll by segregating components such as cash held for OUTS balance payable and deposits held. 3. Agree ending cash balance per the treasurer's report to cash counted (see Step IV.2.). 4. Obtain a copy of the final over-short report; compare total amount to that indicated on the summary report of terminal operator activity obtained in Step V.1.; and review reconciling items, if any, for reasonableness. 5. If cash in terminal operator pouches was counted separately (see Step D), compare count to total balance indicated on summary report of terminal operator activity and review reconciling items for reasonableness (coordinate with Step D.3(d)). B. Summarize test results, including disposition of any discrepancies. ONE TIME PROCEDURE At the appropriate date obtain purged tickets and vouchers OUTS report and confirm payment to respective parties in accordance with MCL 431.252 – 54		

PARI-MUTUEL RACING AUDIT PROGRAM

Attachment A – Policy Requirements

Section 15. (1) Before March 31 of each year, each holder of a race meeting or track license shall file with the MGCB a certified statement of receipts from all sources during the previous calendar year and of all expenses and disbursements, itemized in a manner and on a standardized form as directed by the state treasurer, showing the net revenue from all sources derived by the holder of the license. These certified financial statements shall be considered public records and made available for public inspection during regular business hours. The certified financial statements submitted shall be prepared by a certified public accountant in accordance with generally accepted accounting and auditing standards as promulgated by the American Institute of Certified Public Accountants. The working papers and other records pertaining to preparation of the financial statements may be reviewed by the state treasurer and the MGCB and shall be promptly provided to them by the holders of the race meeting license upon request.

Section 15 (2) On the first day other than Sunday after each day of operation, each holder of a race meeting license shall remit the money due to the state or other entities under this act at the close of the day of operation with a detailed statement of that money as required by this act and the rules promulgated under this act.

Section 23 (1) The auditing of pari-mutuel operations at each race meeting shall be performed by a private auditing firm appointed by the state treasurer and approved by the MGCB. The expense of pari-mutuel audits shall be paid by the state as part of the state treasurer's budget. Daily audit reports on each day of pari-mutuel racing shall be forwarded to the MGCB and the holder of the race meeting license not later than 2 business days after the day for which the report is made. Within 60 days following each race meeting, at least three copies of the pari-mutuel audit report for the entire race meeting shall be forwarded to the MGCB and additional copies shall be supplied to the state treasurer and the race meeting license. The scope of the pari-mutuel audits shall be established in specifications prepared by the state treasurer and approved by the MGCB.

Section 23 (2) The auditors representing the state shall have free and full access to the space or enclosure where the pay-off prices are calculated, to the rooms and enclosures where the totalisator equipment is operated, and to the money rooms and cashier terminals, and shall be responsible for verifying the accuracy of the calculations on which are based the pay-off prices to the public and amount of racetrack commission, state tax and breakage, and for the amounts withheld by the holder of the race meeting license for payment of uncashed tickets. The auditors at all times shall have full and free access to all pari-mutuel records and all aspects, areas, and functions of the totalisator system, including but not limited to, all hardware, software, input and output data, documents, and files. The auditors may audit internally and externally any or all parts and elements of the totalisator system whether on or off the site of the race meeting grounds. If the records are maintained in a machine-readable form, such as computer tapes or disks, copies shall be made available to the auditors on request. The auditors, in addition to their regular reports, shall make prompt report to the MGCB, the state treasurer, and the holder of the race meeting license of any irregularities or discrepancies which they may encounter during their auditing.

Section 23 (3) In addition to auditing the pari-mutuel operations, the auditors shall include in their final reports the daily attendance figures as supplied by the holder of the race meeting license.

ATTACHMENT E

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