

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 1
 to
 CONTRACT NO. 071B5500121
 between
 THE STATE OF MICHIGAN
 and

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|---|-------------------|--|
| The McDonnell Company, LLC 1110 North Sheridan Road Lake Forest, IL 60045 | Patrick McDonnell | pat@themcdonnellcompany.com |
| | PHONE | CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY) |
| | 847-226-7210 | *****2437 |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|------------------------|--------|----------------|--------------|-------------------------|
| PROGRAM MANAGER / CCI | DTMB | Jeff Bankowski | 517-373-9497 | bankowskij@michigan.gov |
| CONTRACT ADMINISTRATOR | DTMB | Jillian Yeates | 517-284-7019 | yeatesj@michigan.gov |

| CONTRACT SUMMARY | | | | |
|---|-------------------------|---------------------------|---|--|
| DESCRIPTION: Operational Excellence – DTMB Office of Good Government (OGG) | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | |
| August 3, 2015 | August 2, 2016 | 1 - 1 Year | August 2, 2016 | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | |
| NET 45 | | N/A | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| MINIMUM DELIVERY REQUIREMENTS | | | | |
| N/A | | | | |

| DESCRIPTION OF CHANGE NOTICE | | | | |
|-------------------------------------|------------------|--------------------------|------------------------------------|-------------------|
| EXERCISE OPTION? | LENGTH OF OPTION | EXERCISE EXTENSION? | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input checked="" type="checkbox"/> | 1 Year | <input type="checkbox"/> | | August 2, 2017 |
| CURRENT VALUE | | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | |
| \$ 239,700.00 | | \$ 400,000.00 | \$ 639,700.00 | |

DESCRIPTION:

Effective March 1, 2016, the following changes are hereby incorporated into the Contract:

1. The State hereby exercises the first option year of the Contract. The revised expiration date is August 2, 2017.
2. The Contract is increased by \$400,000.00.
3. The Contract is authorized for Statewide use.
4. Please note that the Contract Administrator is hereby changed to Jillian Yeates.

All other terms, conditions, specifications and pricing remain the same. Per DTMB contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on March 1, 2016.

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

NOTICE OF CONTRACT NO. 071B5500121
 between
THE STATE OF MICHIGAN
 and

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|---|----------------------|--|
| The McDonnell Company, LLC 1110 North Sheridan Road Lake Forest, IL 60045 | Patrick J. McDonnell | pat@themcdonnellcompany.com |
| | PHONE | VENDOR TAX ID # (LAST FOUR DIGITS ONLY) |
| | 847-226-7210 | 2437 |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|------------------------|--------|----------------|----------------|-------------------------|
| PROGRAM MANAGER | DTMB | Jeff Bankowski | (517) 373-9497 | bankowskij@michigan.gov |
| CONTRACT ADMINISTRATOR | DTMB | Mary Ostrowski | (517)284-7021 | ostrowskim@michigan.gov |

| CONTRACT SUMMARY | | | |
|---|----------------|-------------------------|---|
| DESCRIPTION: Operational Excellence – DTMB, Office of Good Government (OGG) | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
| 2 Years | August 3, 2015 | August 2, 2016 | 1 Year option |
| PAYMENT TERMS | F.O.B. | SHIPPED TO | |
| Net 30 | N/A | N/A | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| N/A | | | |
| MISCELLANEOUS INFORMATION: | | | |
| N/A | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | | \$240,000.00 | |

For the Contractor:

_____,
Contract Administrator

Date

For the State:

_____,

State of Michigan

Date



STATE OF MICHIGAN
Department of Technology, Management and Budget
Procurement

Contract # 071B5500121
Operational Excellence

Buyer: Mary Ostrowski
Telephone Number: (517) 284-7021
DTMB-Procurement Telephone Number 1-855-MI-PURCH (1-855-647-8724)
E-Mail Address: maryostrowski@hotmail.com



STATE OF MICHIGAN

Contract #071B5500121
Operational Excellence

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

Project Request

This is a Contract for services to help departments of the Executive Branch of State government achieve operational excellence through improvements in accountability and standardized processes, resulting in enhanced services for customers and for the citizens of Michigan.

Background

The Executive Branch of the State of Michigan is comprised of 18 departments and approximately 47,000 employees. In addition to the Governor and Lieutenant Governor, Michigan's voters elect two other executive branch officials statewide – the Secretary of State and the Attorney General.

Since 2011, State government has pursued a statewide strategy to reinvent government using four areas of focus: (1) Change Management, (2) Employee Engagement, (3) Performance Management, and (4) Service/Process Optimization. Various statewide programs and practices have been implemented including using data to drive decision-making, promoting transparency and accountability, strategic planning, periodic all-employee surveys to benchmark employee perceptions, training in employee engagement, leadership, metrics and process improvement, and performing process improvement workshops and projects. While these programs and practices will continue, in 2015 State government is resolved to place greater emphasis on identifying and overcoming barriers to operational excellence.

Scope

The scope of this Contract includes the departments of the Executive Branch of the State of Michigan, excluding the Secretary of State and the Attorney General. The State Program Manager will determine which departments will participate should a contract be awarded. The Contractor must assume that at least three departments will participate as follows:

- A. Agency A
 - 250 employees including 25 executives, managers and supervisors
 - 100% of work to be performed in the Lansing-East Lansing Metropolitan Statistical Area
- B. Agency B
 - 1,600 employees including 300 executives, managers and supervisors
 - 100% of work to be performed in the Lansing-East Lansing Metropolitan Statistical Area
- C. Agency C
 - 14,000 employees including 2,000 executives, managers and supervisors
 - 50% of work to be performed in the Lansing-East Lansing Metropolitan Statistical Area
 - 50% of work to be performed at approximately 12 locations in the lower peninsula of the State of Michigan, excluding the Lansing-East Lansing Metropolitan Statistical Area

Objectives

The objectives of this Contract include the following:

- A. Implement an operational excellence program in selected departments of the Executive Branch of State government.
- B. Design and develop tools, techniques, templates, and communication strategies related to an operational excellence program.



- C. Train State of Michigan facilitators to implement an operational excellence program in selected departments of the Executive Branch of State government.
- D. Design and develop an operational excellence training course to be integrated with State of Michigan manager development training programs.

Requirements

1. Work and Deliverables

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

A. Methodology for Operational Excellence

A methodology is an approach to doing something with a distinct set of rules, tools, techniques, templates, tests, activities, deliverables, and processes which typically function to solve a specific problem. An effective methodology is well-defined and repeatable. .

Contractor Methodology:

The fundamental methodologies to be used in achieving the excellence objectives of this Contract are the Six Steps to Operational Excellence set forth in Contractor's book entitled Everybody Wants to Go to Heaven: 6 Steps to Organizational Excellence. The Six Steps are designed and have proven to be effective in managing such a change process.

Step #1: Understand The Fundamentals of Change.

Introducing change into an organization. By understanding the fundamentals of change, those leading the change can respond effectively and thereby guide the organization through the process.

Step #2: Establish a Community of Trust

No matter how effectively the change is introduced, the organization will only effect it if they have trust that they will not be at risk for doing so. If the culture cannot be trusted to protect them, individuals will not take the risk of changing their behavior. The core values of integrity, teamwork, respect and responsibility must be reinforced in the culture.

Step #3: Practice Principled Leadership

The responsibility for embedding the core values into the culture is that of organizational leadership from the Office of the Governor through the Agencies. With trust in the leadership, no substantive change can occur at the performance level.

The Contractor is prepared to create a leadership development/training program to produce the leadership required to achieve the objectives of the Contract. (See Requirements 1. C. below.)

Step 4: Create a Plan

The Contractor must ensure the first three steps are in place, prior to developing a plan. The Plan will be developed to achieve the operational excellence objectives of the Contract.

The objectives that will be achieved, and the deliverables resulting there from will include the following:

- Embedded understanding of the Six Steps to ensure that the processes will continue beyond the scope of this Contract.
- Methodologies, tools, templates and practice aides have been created that will have become embedded in the operational culture at the Agency level.
- Substantial enhancement of Agency performance as indicated by enhance quantity, quality and timeliness of performance as supported by relevant, Agency developed, operating metrics.



- Embedded understanding as to how such metrics are to be used to achieve Step 6: Continuous Improvement.
- Substantial enhancement in staff performance due to the real time feedback they receive from the metric based monitoring of performance. Frequent communication will ensure that employees always know how they can improve and will be given the counsel to help them be successful.

Step 5: Plan Implementation

Objectives of Operational Excellence are achieved in Step 5. Agency management learns how to achieve objectives and effect positive change by actually going out and doing it. Objectives are identified, results monitored and additional plans are made on a weekly basis.

The Contractor must reinforce the principles weekly throughout the Contract. The Contractor must provide the planning methodologies, tools, templates and techniques to manage all aspects of plan implementation and the development of objectives to final achievement for utilization.

The concept is based on the premise that the definition of excellence, as developed by the Agencies, which consists of achieving quantity, quality and timeliness objectives that are far in excess of those currently being realized.

The next step is to cause the Agency level teams to identify the “impediments”, or rocks in the path.

The implementation process then becomes one of continuous emphasis on removing such impediments, generally defined as some form of ill defined, cumbersome or inefficient process and/or underperforming staff.

Weekly goals are then defined with respect to addressing each impediment and weekly monitoring of progress continues until the impediments have been addressed and metric based management is in place to monitor performance at all levels.

At this point, the excellence objective deliverables will have been achieved.

The following techniques, templates, checklists and management tools have been developed to achieve implementation objectives. Copies are available upon request.

They are to be considered the primary deliverables of the project. In learning how they are used, the Agency level management teams will be equipped to continue Operation Excellence beyond the scope of this Contract. (See Step 6 below):

- A spreadsheet “Dashboard” to monitor the project, including the organization, impediments identified and the status of their elimination – by week, over a 52 week cycle of four, 13 week phases.
- Phase 1: Model programs are in place.
- Phase 2: Model programs have been extended to approximately 50% of Agency functions.
- Phase 3: Implementation is approximately 75% accomplished.
- Phase 4: Implementation complete.

The Contractor must utilize the following the series of templates, protocols, spreadsheets and documents to control Six Step process implementation:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.



- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

Step 6: Continuous Improvement

This the final of the Six Steps and is the ultimate deliverable of this project. Step 6 is a longer term objective beyond the scope of this RFP, therefore the deliverables are limited to the results to be achieved in the Phases indicated. In achieving those phased goals, the Agencies will be learning the lessons needed to ultimately achieve the state of continuous improvement.

B. Implement Operational Excellence

The Contractor must implement its operational excellence methodology for the Scope, described in this Contract.

The Contractor must provide an implementation road map for each of the 3 Agencies identified in the Scope section of this Contract.

During its work with each Agency within the Scope, Contractor must train no less than two (2) State of Michigan employees in the Contractor's operational excellence methodology. The purpose of this training is to enable the State of Michigan to continue to implement the Contractor's operational excellence methodology without the assistance of Contractor staff.

Also, no greater than ten (10) business days after completing work for each Agency within the Scope, Contractor must provide the State Program Manager with a written summary of findings and a recommended plan and timeline for the State to continue implementation of the operational excellence program in the Agency.

Contractor Implementation Roadmap:

There will be a 52 week implementation cycle for each Agency. The 52 weeks consist of four, 13 week Phases for which certain objectives (deliverables) have been defined. Contractor facilitates all Phase 1 meetings and begins to transition facilitation to Agency level teams in Phase 2. By Phases 3 and 4, consistent with the timeframe of the project, Contractor will complete the Agency level transition. By that time, Agency level personnel will have been trained in Contractor methodologies.

Agency Level Team

The implementation team will be led by the Contractor as assisted by State Good Government individuals trained, or about to be trained, in the Six Step methodologies. Also, the Agency level implementation is the responsibility of the Agency Deputy Director, assisted by one or more agency employees who are to be trained.

Role of Civil Service

Also included on the Agency level teams would be the Agency human resource director. This individual would be responsible for overseeing the get well programs described elsewhere in this document. Their responsibility includes ensuring that all appropriate policies and procedures are adhered to in dealing with employees.



State Resource Commitment

It is expected that the aforementioned state employees will be available as follows:

- Agency level Deputy Director and supporting team will attend all weekly implementation meetings and provide interim reviews as required to meet weekly objectives in Phase 1. Phases 2, 3 and 4 will be under their direct supervision.
- Good Government employees will facilitate weekly meetings for the model programs in Phase 1. During Phase 2, they will transition facilitation to the Agency level team and be available as needed during Phases 3 and 4.
- The HR director will meet with the Agency team weekly to review the status of Agency get well plans.
- Contractor will conduct the one day orientation and facilitate the weekly meetings for every model program during Phase 1. During Phase 2, the Contractor will transition facilitation to the Agency level team and be available for consultation as needed.

Agency Level Timeline

The timeline addresses the plan by phases, including deliverables and deadlines. The scope includes the three Agencies noted and the Manager Training Course.

Agency A

Month 1

Implementation of Phase 1 of Agency A begins:

Significant Activities:

Week 1

Contractor meets with those assigned responsibility for implanting Operational Excellence for that Agency.

Training takes place with respect to the methodologies.

Model programs are selected by the Agency for Phase 1 implementation. The Agency level teams become familiar with the Six Steps methodologies, the templates and the process by which the weekly meetings are conducted. In that way, the knowledge transfer required by this Contract is achieved.

Week 2

Interviews are conducted by the Contractor with key Agency managers to assess the culture and modify the implementation objectives as needed.

Week 3

Contractor initiates Phase 1 with a one day long orientation/training presentation to Agency management of the Six Step Process, the objectives of Operation Excellence and the presentation, use and purpose of the methodologies.

The first weekly “homework” assignment is given with respect to the model programs, to meet with your key staff and define “excellence” with respect to each model program.

Week 4

The implementation team consisting of the Contactor, a representative from Good Government, the Deputy Agency Director, and an Agency assistant to manage the program internally – and model program management meet to assess progress and assign the next weekly objectives.



These meetings depend on the number of model programs selected, will be approximately two hours long. It is expected that two days per week will be required to monitor performance at this stage.

This is the beginning of the learning phase and progress over the next few weeks are inconsistent as the teams struggle with the methodologies and the reality of leading change. It is here that the lessons of Step 1: The Fundamentals of Change pay off. The Valley of Death is real.

Assignment for the next week is to identify the impediments to achieving excellence objectives throughout the Agency, but specifically in the Model programs. The team is directed to involve staff at all levels in this discussion and document results

The next phase of weekly assignments is initiated.

Month 2

Implementation of Phase 1 of Agency A continues:

Significant Activities:

Week 1

Key impediments are discussed and plans defined to address them. Generally, they are of two types: inefficient process, including those that can be addressed and those beyond Agency control, and underperformance.

Plans are outlined to address each type. Process improvement resources are to be involved in addressing ineffective process and HR is to manage the process of addressing underperformance.

The next task assigned is to prioritize the impediment plans and establish the next weekly objectives.

Week 2, 3 and 4

This begins a continuous process of executing the weekly plans, monitoring performance and establishing the next weekly goals. This is slow going at this point, but momentum will build as the process becomes familiar.

The homework for Month 3, Week 1 is to develop metrics, for which there is a template provided to monitor compliance with the Model Programs at every level. Staff at every level are to be involved in this process.

Month 3

Implementation of Phase 1 of Agency A continues:

Significant Activities:

Week 1

The metric templates for each model program are presented and discussed. Refinements are to be reviewed in Week 2 as well as continued impediment implementation plans.

Week 2

Metrics continue to be refined.

**Week 3**

Data is now being accumulated while they continue to be refined.

Week 4

This marks the end of Agency A Phase 1 implementation. Deliverables include, inefficiencies in performance due to process and staff underperformance have been addressed, corrective actions in place and metrics in place to monitor performance.

The Model programs relate to about 25% of Agency activities and programs.

Months 4, 5 and 6

Implementation of Phase 2 of Agency A begins:

Significant Activities:

This phase is merely a continuation of the activities set forth in Phase 1. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 50% of Agency programs will now have achieved Operational Excellence objectives.

Contractor's role is now to attend Agency level weekly meetings to provide oversight and respond to any issues that may arise.

Months 7, 8 and 9

Implementation of Phase 3 of Agency A begins:

Significant Activities:

This phase is merely a continuation of the activities set forth in Phases 1 and 2. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 75% of Agency programs will now have achieved Operational Excellence objectives.

Contractor's role is now limited to overall monitoring of performance and advice as needed as the knowledge transfer to Agency level staff is now complete.

Months 10, 11 and 12

Implementation of Phase 4 of Agency A begins:

Significant Activities:

This phase is a continuation of the activities set forth in Phases 1 and 2. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 100% of Agency programs will now have achieved Operational Excellence objectives.

The cultural change in Agency A is now complete. The methodologies needed to sustain the level of Operational Excellence, including enhancing process and counseling staff to a higher level of performance have been achieved.

Agency B**Months 1 to 12**

Implementation of Phase 1 of Agency B begins. This is expected to occur one month after the implementation of Phase 1 at Agency A begins, or Month 2 in the overall chronology of the project.



The four Phased implementation is expected to follow the same weekly schedule over 13 weeks with the same results and deliverables.

Agency C

Contractor will facilitate weekly meetings for the implementation process, through a schedule of alternating on site visits and teleconferencing. This schedule must not have an effect on the scope of the project or deliverables.

Months 1 to 12

Implementation of Phase 1 of Agency C begins. This is expected to occur one month after the implementation of Phase 1 at Agency A begins, or Month 2 in the overall chronology of the project.

The four Phased implementation is expected to follow the same weekly schedule over 13 weeks with the same results and deliverables.

Summary

By March 2016:

- Agencies A and B will be in Phase 3
- Agency C will just have completed Phase 2
- The deliverables for the Manager Training Course as set forth in Requirements 1. C. will have been provided.

C. Manager Training Course for Operational Excellence

The State of Michigan seeks to integrate operational excellence concepts and methods in its manager development training programs. The Contractor must deliver one (1) training course to no more than twenty-five (25) State of Michigan managers at a classroom provided by the State of Michigan located in the Lansing-East Lansing Metropolitan Statistical Area.

The Contractor must provide all course materials within one month of the date of this contract. Additional classes may be requested from time to time subject to Contractor's availability.

Contractor Manager Development Training Program:

Introduction and Overview

The Contractor must be prepared to work with a steering committee to ensure that all elements of required training are considered. The overview set forth herein is subject to modification as needed to enhance their usefulness.

No prior preparation is required on the part of the participants. Contractor does not assume any substantive experience on the part of the participants with respect to the methodologies or concepts to be presented.

Contractor is prepared to serve as the overall instructor for the introductory course as well as additional instruction as requested. Contractor recommends that the course be presented at least monthly to maximize the number of participants. Videoing the instruction for broader viewing should also be considered.

In order to be effective, the Manager Training course must prepare the participants to achieve the objectives of Operational Excellence. The course must also be integrated with other training sessions now being provided. To the extent elements of this curriculum are now in place, they would be integrated into on comprehensive course.



The development of the curriculum will occur in August with the first training session to be held in September. Additional courses should be taught at least monthly.

Leveraging of Instruction

The Contractor must conduct training sessions for state employees to conduct the training, thereby enhancing the number of state employees being trained, if requested by the State Program Manager.

The conduct of this course would be integrated into the Agency level implementation of Operational Excellence. Contractor would hold training sessions during the Phase 1 period as needed to create a trained cadre of Agency level managers who could then conduct additional training sessions as required to leverage the value of the course material.

The Management Course consists of three phases.

Phase 1: Introduction to the Principles of Leadership

Phase 2: The Practice of Leadership

Phase 3: The Role of Leadership in a Culture of Excellence

Phase 1: Introduction to the Principles of Leadership. The total, comprehensive training curriculum for managers should include the following elements:

- Introduction to the Six Steps of Organizational Excellence
- The Development and Practice of Principled Leadership
- Introduction to the Methodologies used in Operation Excellence
- Introduction to the Principles of Process Improvement
- Supervision of Employees and counseling performance improvement

Phase 1: Introduction to the Principles of Leadership (2 Days)

Key Elements

Introduction to the Six Steps of Organizational

The Six Step Process for creating organizational excellence is all encompassing strategy for achieving our Operational Excellence Objectives. Therefore, the participants must understand the substance and interdependency of the Six Steps, with emphasis on the role of Leadership, as described in Step #3 Practice Principled Leadership.

Participants will learn the role of such leadership in effecting the cultural change required to achieve program objectives.

Step #1: Understand The Fundamentals of Change.

Participants will be exposed to the fundamentals of the change process in order to prepare them to lead their staff through the Valley of Death.

The Valley of Death consists of five levels of response to the prospect of change. They are Denial, Fear, Anger, Reconciliation and Triumph. Leaders must understand the strategies for responding to these emotions in a professional manner and leading their staff through the challenges of change.

Step #2: Establish a Community of Trust

Participants must understand the role of values in a culture that is essential in a high performing community. Understanding the role of values, and the leaders' role in adhering to them is essential. The role of the core values of integrity, teamwork, respect and responsibility must be understood and reinforced by the participants.

**Step #3: Practice Principled Leadership**

This is the heart of the Management Training Course as it is the most important responsibility of our managers. They must know and understand the elements of Principled Leadership if they are going to lead our employees to excellence.

The responsibility for embedding the core values into the culture is that of organizational leadership from the Office of the Governor through the Agencies. Without trust in the leadership, no substantive change can occur at the performance level.

The instruction is centered on the following Leadership Characteristics that must be mastered by the participants through understanding and practice.

Fundamental Attributes

- The Reality of Leadership
- Becoming Effective Leaders – Master the Traits
- The Interrelationship Between Leadership and Management
- Practice Effective Leadership
- Calling The Question

Contractor must create a leadership development/training program to produce the leadership required to achieve the objectives of the Contract. (See Requirements 1. C. below.)

Step 4: Create a Plan

The role of the participant in developing a plan will be reviewed utilizing the concepts, experiences and methodologies that will be used in Operational Excellence.

The methodologies, templates and checklists being utilized in Operational Excellence planning are explained. In depth instruction in their use will be covered in separate training session.

The concepts of impediments will be covered.

Step 5: Plan Implementation

The role of the participant in implementing plans will be reviewed utilizing the concepts, experiences and methodologies that will be used in Operational Excellence.

The methodologies developed by the Office of Good Government to enhance process effectiveness will be introduced.

The methodologies of documenting the counseling of underperforming staff will be covered. Instruction in the process of counseling and communicating with staff pursuant to Civil Process will also be provided in more depth in a separate session.

The implementation process will become one of continuous emphasis on removing such impediments, generally defined as some form of inefficient process and underperforming staff.

Introduction to the Methodologies used in Operation Excellence

This training session will be conducted by Good Government staff and those who developed the methodologies in the MDARD model program project.

Introduction to the Principles of Process Improvement

This training session will be conducted by Good Government staff who have developed and utilized them over in the initial phases of the program. It is intent to utilize the experiences gained in this program.

**Supervision of Employees and counseling performance improvement**

This training session must be conducted which will expose the participants to the processes and procedures developed by Civil Service to provide effective counsel and direction to those employees whose performance has been identified as an impediment to reaching Agency Excellence objectives.

The intent of such counseling is to enable the employee to meet the expectations of their jobs thereby enhancing the resources available to the Agency to meet its Excellence Objectives.

Phase 2: The Practice of Leadership

Upon completion of the course, the State will be prepared to lead in the implementation of Operational Excellence implementation at their respective Agencies

Phase 3: The Role of Leadership in a Culture of Excellence

This Phase is never ending as the lessons learned in Phase 1 and Phase 2 are now embedded in the operational culture of each Agency.

D. Overall Program Evaluation and Implementation Roadmap

No less than 10 business days prior to the conclusion of the Contractor's services, Contractor will provide the State Program Manager with a written summary of its findings, recommended improvements, a recommended plan, and timeline for the State to continue implementation of operational excellence program in other departments of the Executive Branch of State government.

Requirements 1. A. sets forth the templates and controlling methodologies that will be used to monitor Agency level implementation. The monthly "Dashboard" sets forth the number of impediments defined, the status of their implementation and the numbers fully addressed, the percentage of operational metrics in place (both across the Agency and with respect to the model programs), and the number of employees on both formal and informal get well programs will be included.

The Agency level performance will be monitored weekly and this Dashboard will be prepared monthly to provide to the Project Manager and Agency Director a summary of program status. In addition, the Contractor will present such information to Agency management at least monthly and as needed in the interim.

The entire focus of the project is to identify improvements that must be made weekly that will enhance the excellence of the Agency operations. The achieving of these improvements is subject to the weekly, monthly monitoring, controlling and reporting processes described in the proposal.

In the course of this continuous process, Contractor's recommendations are made and incorporated into the weekly planning/evaluation of progress. The input is contemporaneous with the providing of Contractor's services.

A monthly dashboard report will be prepared to summarize the improvements that have been made, or will be made, by Agency and provided to the State Program Manager as requested.

With respect to recommendations for post project implementation, and to more directly address the point, the transfer of knowledge occurs through the applications of the methodologies on a weekly basis under the oversight of the Contractor. The essence of such oversight is to offer recommendations on improvement in the application of the methodologies, and the results, thereby enabling the agencies to continue implementation beyond the expiration of the project.



2. Staffing

A. Contractor Representative

The Contractor must appoint a Contractor Representative (the “Contractor Representative”), specifically assigned to the State of Michigan, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering, delivery, and so forth.

The Contractor must notify the Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative.

Contractor Representative:

Patrick J. McDonnell
President & CEO
1110 North Sheridan Road
Lake Forest, IL 60045
(847) 226-7210

B. Key Personnel

The Contractor must appoint an individual or individuals who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Contractor’s Key Personnel must be specifically assigned to the State account, be knowledgeable of the contractual requirements, respond to State inquires within 24 hours, and be on-site to engage in meetings with State employees.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this 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**”). An Unauthorized Removal 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. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

Contractor Key Personnel:

Patrick J. McDonnell, sole employee is to provide all services required in this Contract.
The Contractor must not take on any new clients during the Contract term.
The Contractor must be physically located as requested by the State.

C. Work Hours

The Contractor must provide Contract Activities during the State’s normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.



D. Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

E. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- Of the total bid, the price of the subcontractor's work.

F. Security

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

3. Project Management

A. Project Plan for Operational Excellence

A project plan is a description of the steps and actions necessary to achieve an objective during a specified period of time.

The Project Plan must include a work plan for each of the three departments identified under the scope section of this Contract.

Contractor's Draft Project Plan:

Introduction

There will be a 52 week implementation cycle for each Agency noted. The 52 weeks consist of four, 13 week Phases in which certain objectives (deliverables) have been defined. Contractor facilitates all Phase 1 meetings and begins to transition facilitation to Agency level teams in Phase 2. By Phases 3 and 4, consistent with the timeframe of the project, Contractor will complete the Agency level transition. By that time, Agency level personnel will have been trained in Contractor methodologies.

Weekly status reports will be provided by Contractor to the Agency Director and the Office of the Governor setting forth the progress and any issues that could affect achieving Operational Excellence Objectives.

Agency Level Implementation Timeframe

The timeline addresses the plan by phases, including deliverables and deadlines. The scope includes the three Agencies noted.

Implementation Control and Work Documentation Templates

Note also the appropriate templates to be utilized each week and their purpose. These templates are the "the work plan." Taken together, they document and control the implementation and reporting process. Further refinements, if needed, will be made during the course of Agency level implementation.



Agency A

Month 1

Implementation of Phase 1 of Agency A begins:

Significant Activities:

Week 1

Contractor meets with those assigned responsibility for implanting Operational Excellence for that Agency.

Training takes place with respect to the following methodologies, templates and control documents that will monitor implementation. .

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

Model programs are selected by the Agency for Phase 1 implementation. The Agency level teams become familiar with the Six Steps methodologies, the templates and the process by which the weekly meetings are conducted. In that way, the knowledge transfer required by this Contract is achieved.

Week 2

Interviews are conducted by the Contractor with key Agency managers to assess the culture and modify the implementation objectives as needed.

Week 3

Contractor initiates Phase 1 with one day long presentation to Agency management of the Six Step Process, the objectives of Operation Excellence and the presentation, use and purpose of the methodologies.

The first weekly “homework” assignment is given with respect to the model programs, to meet with your key staff and define “excellence” with respect to each model program.

Week 4

The implementation team consisting of the Contactor, a representative from Good Government, the Deputy Agency Director, and an Agency assistant to manage the program internally – and model program management meet to assess progress and assign the next weekly objectives.



These meetings depend on the number of model programs selected, but will be approximately two hours long. It is expected that two days per week will be required to monitor performance at this stage.

This is the beginning of the learning phase and progress over the next few weeks are inconsistent as the teams struggle with the methodologies and the reality of leading change. It is here that the lessons of Step 1: The Fundamentals of Change pay off. The Valley of Death is real.

Assignment for the next week is to identify the impediments to achieving excellence objectives in the Model programs. The team is directed to involve staff at all levels in this discussion and document results.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

The next phase of weekly assignments is initiated.

Month 2

Implementation of Phase 1 of Agency A continues:

Significant Activities:

Week 1

Key impediments are discussed and plans defined to address them. Generally, they are of two types: inefficient process, including those that can be addressed and those beyond Agency control, and underperformance.

Plans are outlined to address each type. Process improvement resources are to be involved in addressing ineffective process and HR is to manage the process of addressing underperformance, all pursuant to process.

The next task assigned is to prioritize the impediment plans and establish the next weekly objectives.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.

**Week 2, 3 and 4**

This begins a continuous process of executing the weekly plans, monitoring performance and establishing the next weekly goals. This is slow going at this point, but momentum will build as the process becomes familiar.

The homework for Month 3, Week 1 is to develop metrics, for which there is a template provided, to monitor compliance with the Model Programs at every level. Staff at every level are to be involved in this process.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

Month 3

Implementation of Phase 1 of Agency A continues:

Significant Activities:

Week 1

The metric templates for each model program are presented and discussed. Refinements are to be reviewed in Week 2 as well as continued impediment implementation plans.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.

Week 2

Metrics continue to be refined.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.



- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.

Week 3

Data is now being accumulated while they continue to be refined.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.

Week 4

This marks the end of Agency A Phase 1 implementation. Deliverables include, inefficiencies in performance due to process and staff underperformance have been addressed, corrective actions in place and metrics in place to monitor performance.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

The Model programs relate to about 25% of Agency activities and programs.

Months 4, 5 and 6

Implementation of Phase 2 of Agency A begins:

Significant Activities:

This phase is merely a continuation of the activities set forth in Phase 1. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 50% of Agency programs will now have achieved Operational Excellence objectives.



Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

The Model programs relate to about 25% of Agency activities and programs.

Contractor's role is now to attend Agency level weekly meetings to provide oversight and respond to any issues that may arise.

Months 7, 8 and 9

Implementation of Phase 3 of Agency A begins:

Significant Activities:

This phase is merely a continuation of the activities set forth in Phases 1 and 2. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 75% of Agency programs will now have achieved Operational Excellence objectives.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

Contractor's role is now limited to overall monitoring of performance and advice as needed as the knowledge transfer to Agency level staff is now complete.

Months 10, 11 and 12

Implementation of Phase 4 of Agency A begins:



Significant Activities:

This phase is a continuation of the activities set forth in Phases 1 and 2. The objective is to achieve implementation of an additional 25% of Agency programs. At the end of this phase, 100% of Agency programs will now have achieved Operational Excellence objectives.

Templates to be utilized:

- SOP template to set forth the protocols being developed to address impediments.
- A template to monitor weekly performance, including the status of implement identification and progress toward their elimination, and the action steps for the subsequent week.
- A template setting forth the format for field level metrics, by individual, to monitor achievement of Quantity, Quality and Timeliness objectives, as defined.
- A template setting forth the format of accumulating and reporting field level metrics at each step of control and oversight.
- Civil Service employee roster, setting forth the status of each employee, and the current state of performance improvement objectives, if any.
- A template to monitor process improvement, by project, referenced to the overall impediment control document.
- A template setting forth the status of the project, by Agency, monthly for control and reporting to the Steering Committee.

The cultural change in Agency A is now complete. The methodologies needed to sustain the level of Operational Excellence, including enhancing process and counseling staff to a higher level of performance have been achieved.

Agency B

The implementation process, roadmap timetable and methodologies used will be identical to that set forth above.

Months 1 to 12

Implementation of Phase 1 of Agency B begins. This is expected to occur one month after the implementation of Phase 1 at Agency A begins, or Month 2 in the overall chronology of the project.

The four Phased implementation is expected to follow the same weekly schedule over 13 weeks with the same results and deliverables.

Agency C

Contractor will facilitate weekly meetings, though a schedule of alternating on site visits and teleconferencing may be required. This schedule must not have an effect on the scope of the project or deliverables.

Months 1 to 12

Implementation of Phase 1 of Agency C begins. This is expected to occur one month after the implementation of Phase 1 at Agency A begins, or Month 2 in the overall chronology of the project.

The four Phased implementation is expected to follow the same weekly schedule over 13 weeks with the same results and deliverables.

Summary

By March 2016:

- Agencies A and B will be in Phase 3
- Agency C will just have completed Phase 2



- The deliverables for the Manager Training Course as set forth in Requirements 1. C. will have been provided.

Acceptance

Monthly billings must be approved by the State Program Manager prior to the Contractor performing the deliverables and submitting the invoice. Deliverables invoiced must reflect actual work done and must be in alignment with the percentages indicated below:

Percent of Operational Excellence achieved in Agency programs after each 13-week Phase:

- Phase 1 - 25%
- Phase 2 - 50%
- Phase 3 - 75%
- Phase 4 - 100%

Acceptance Criteria for Month 1:

- The entire set of templates, methodologies and monitoring and control documents.
- The management training methodologies have been provided as a “first draft” for finalization in August.
- Completion of a one day training/orientation session with respect to the Six Step Processes with the management teams of each Agency.
- Meetings have commenced to finalize the planning to effect the implementation schedule. Such meetings will either in person or by phone.
- Monthly dashboard report, by Agency, reflecting the status of each Agency and the progress being made to implement the operational excellence plan which is pursuant to the weekly schedule/work plan set forth in the Contract, including any and all supporting data requested by the State has been provided to the State Program Manager.

Acceptance Criteria for Months 2 through 12:

- Monthly dashboard report, by Agency, reflecting the status of each Agency and the progress being made to implement the operational excellence plan which is pursuant to the weekly schedule/work plan set forth in the Contract, including any and all supporting data requested by the State has been provided to the State Program Manager.

B. State Program Manager.

1. The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Contract Effective Date, the Contractor must submit a final project plan to the Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.
2. The Office of Internal Audit Services (OIAS) is the leading department for the operational excellence program. OIAS will be supported by the Office of Good Government (OGG). The Contractor must include a representative from the OIAS and/or the OGG at every stage of this Contract for every department.

For this Statement of Work the State Program Manager is:

Jeff Bankowski

C. Meetings

The Contractor must participate in one 30 minute meeting each week with the State Program Manager. The State may request other meetings as it deems appropriate.

**D. Reporting**

24 hours prior to each weekly meeting, the Contractor must submit to the State Program Manager a weekly status report that describes the status of Work and Deliverables. The status of Work and Deliverables should include accomplishments, risks, problems/complications, anticipated deadlines, completion goals, and key measures of progress.

4. Invoice and Payment**A. Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

Reference Exhibit C Pricing for invoice submission instructions.



STATE OF MICHIGAN

Contract No. 071B5500121
Operational Excellence

**EXHIBIT C
PRICING**

1. Pricing is for a fixed price, lump sum amount and staffing must include all costs, including but not limited to, any one-time or set-up charges, fees, all travel costs, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

| Deliverable | Monthly Fee Breakdown for Payment upon | Total Price |
|---|---|--------------------|
| Implement Operational Excellence | Pricing includes implementation of methodology, and knowledge transfer to State of Michigan Staff. | |
| Department A | Aug \$25K, Sep \$15K, Oct \$7.5K | \$85,000 |
| Department B | Sep \$15K, Oct \$7.5K, Nov \$5K | \$60,000 |
| Department C | Oct \$20K, Nov \$15K, Dec \$10K | \$70,000 |
| Manager Training Course for Operational | Monthly as follows: August \$15,000 | \$25,000 |
| Program Evaluation and Implementation | Included in above. | |
| Grand Total | | \$240,000 |

Payment Schedule

(Thousand)

| PROJ | 2015 AUG | 2015 SEP | 2015 OCT | 2015 NOV | 2015 DEC | 2016 JAN | 2016 FEB | 2016 MAR | Total |
|------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| A | 25.0 | 15.0 | 7.5 | 5.0 | 7.5 | 8.3 | 8.3 | 8.3 | 85.0 |
| B | | 15.0 | 7.5 | 5.0 | 7.5 | 8.3 | 8.3 | 8.3 | 60.0 |
| C | | | 20.0 | 15.0 | 10.0 | 8.3 | 8.3 | 8.3 | 70.0 |
| MNGT | | | | | | | | | |
| TRNG | 15.0 | 10.0 | | | | | | | 25.0 |
| | 40.0 | 40.0 | 35.0 | 25.0 | 25.0 | 25.0 | 25.0 | 25.0 | 240.0 |



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and [Insert Company Name] (“**Contractor**”), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on August 3, 2015 (“**Effective Date**”), and unless terminated, expires on August 2, 2016.

This Contract may be renewed for up to one (1) additional year period. Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

- 1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

| | |
|--|--|
| If to State: <i>Mary Ostrowski</i> DTMB Procurement 525 W Allegan St 1 st Flr NE Lansing, MI 48909 ostrowskim@michigan.gov (517) 284-7021 | If to Contractor: <i>Patrick J. McDonnell</i> 1110 North Sheridan Road Lake Forest, IL 60045 pat@themcdonnellcompany.com (847) 226-7210 |
|--|--|



3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

| | |
|---|---|
| State: <i>Mary Ostrowski</i> DTMB Procurement 525 W Allegan St 1 st Flr NE Lansing, MI 48909 ostrowskim@michigan.gov (517) 284-7021 | Contractor: <i>Patrick J. McDonnell</i> 1110 North Sheridan Road Lake Forest, IL 60045 pat@themcdonnellcompany.com (847) 226-7210 |
|---|---|

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

| | |
|---|---|
| State: <i>Jeff Bankowski</i> DTMB bankowskij@michigan.gov (517) 373-9497 | Contractor: <i>Patrick J. McDonnell</i> 1110 North Sheridan Road Lake Forest, IL 60045 pat@themcdonnellcompany.com (847) 226-7210 |
|---|---|

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

| Insurance Type | Additional Requirements |
|--|---|
| Commercial General Liability Insurance | |
| <u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence | Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0. |
| Automobile Liability Insurance | |
| <u>Minimal Limits:</u> \$1,000,000 Per Occurrence | |
| Workers' Compensation Insurance | |
| <u>Minimal Limits:</u> Coverage according to applicable laws governing work activities. | Waiver of subrogation, except where waiver is prohibited by law. |



Employers Liability Insurance

Minimal Limits:

\$500,000 Each Accident
\$500,000 Each Employee by Disease
\$500,000 Aggregate Disease.

Professional Liability (Errors and Omissions) Insurance

Minimal Limits:

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

Deductible Maximum:

\$50,000 Per Loss



If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Reserved.**

8. **Reserved.**

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.



13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Reserved.**
18. **Reserved.**
19. **Reserved.**

20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding



the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.



25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
26. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.



28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
31. **Reserved.**
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. **Data Privacy and Information Security.**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy



and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. **Reserved.**

35. **Reserved.**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration



contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
42. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
43. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.



47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the 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 of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").