



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

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

NOTICE OF CONTRACT NO. 651B4300001
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
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	TELEPHONE	CONTRACTOR #, MAIL CODE
	312-583-5747	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
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BUYER:	DIFS	Darcie Payne	517-373-4776	Payned3@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)			
Development of Feasibility Study for All-Payer Claims Database			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
One year & nine months	January 1, 2014	September 30, 2015	Two additional one year periods
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
1% discount if paid within 10 days			
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$599,180.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #651B4300001. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.



Notice of Contract #: 651B4300001

FOR THE CONTRACTOR:	FOR THE STATE:
_____ Navigant Consulting, Inc. Firm Name	_____ Signature
_____ Authorized Agent Signature	_____ Penny Wright, Director Name/Title
_____ Authorized Agent (Print or Type)	_____ Department of Insurance & Financial Services Enter Name of Agency
_____ Date	_____ Date



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Attachment A, Pricing



DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

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

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

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

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

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

DTMB means the Michigan Department of Technology Management and Budget.

DIFS means the Department of Insurance and Financial Services.

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

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

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

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

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

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.



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

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

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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a contract for development of a feasibility study for an All-Payer Claims Database for the Department of Insurance and Financial Services.

1.012 Background

The following mission, vision and values of the Department of Insurance and Financial Services (DIFS) provide relevant background information for this project request. For more information please go to <http://www.michigan.gov/difs>.

Mission

The mission of the Michigan Department of Insurance and Financial Services is to provide a business climate that promotes economic growth while ensuring that the insurance and financial services industries are safe, sound and entitled to public confidence. In addition, the Department provides consumer protection, outreach and education services to Michigan citizens.

Vision

The vision of the Michigan Department of Insurance and Financial Services is a business climate in which the insurance and financial services industries are poised for economic growth and a regulatory environment that protects consumers while ensuring industry sustainability in a competitive market.

Values

As a Department and as individuals, we value integrity, honesty, personal excellence, continual self-improvement, and accountability. We strive to create and maintain active relationships with both consumers and licensees in the insurance and financial services industries to ensure adequate protections while fostering growth, strength and sustainability.

1.020 Scope of Work and Deliverables

1.021 In Scope

The selected contractor would perform research and analysis regarding feasibility of establishing an All-Payer Claims Database (APCD) in Michigan. The APCD would generally include data derived from medical claims, pharmacy claims, eligibility files, provider (facility and practitioner) files, and dental claims from private and public payers. Payers would include insurance carriers, third-party administrators (TPAs), pharmacy benefit managers (PBMs), dental benefit administrators, the state Medicaid agency, CMS (Medicare), Federal Employees Health Benefit (FEHB) and TRICARE administrators. The APCD system would collect data from existing claims transaction systems used by health care providers and payers. The information collected in the APCD would include patient demographics, provider demographics, clinical, financial, and utilization data. The contractor shall develop a report examining the feasibility of establishing an APCD as described above in Michigan. Additional information regarding the APCD can be found at the following address: <http://www.apcdouncil.org/>.

Credit: APCD Council, a collaboration between the University of New Hampshire and the National Association of Health Data Organizations.

Bidder Response: The Contractor must include details in how they propose to complete the above in the bidder box below:

All -Payer Claims Databases (APCDs) are emerging to support healthcare transparency and reform initiatives in many states. Historically, APCDs have served the public, policymakers and researchers to measure population health and quality performance metrics, but in response to the Affordable Care Act (ACA), APCDs are becoming front and center with the health insurance rate review process and Health Insurance Marketplace qualified health plan (QHP) certification process. The ACA is creating an increased need for states to integrate



multiple data sources, standardized data collection and develop “built-in” analytic tools for the end user to easily produce reports. The State of Michigan (State) is seeking consulting services to conduct an APCD feasibility study and develop a final report for the Michigan Department of Insurance and Financial Services (DIFS).

Navigant understands the importance to study the feasibility prior to moving forward with planning and implementation efforts to properly scope and size the APCD endeavor. Each state must design the APCD that meets their specific needs and not just rubber stamp what other states are implementing. To collect data just to collect data is not a valuable use of resources and technology and does not support the traditional approach of DIFS, which is to promote economic growth while ensuring public confidence.

APCDs do provide the health care system an opportunity to create a mechanism to obtain pertinent data and information needed to guide decision-making and to create incentives for provider and health plan accountability. Having a clear understanding of what is currently available, what works well and how the data will leverage decision-making is important while determining the APCD’s core functions. Designed well, an APCD technological infrastructure is a key element to improve quality, address unjustified variations in clinical practices, use during the rate review process to justify health plan premium increases and measure hospital costs relative to benchmarks.

Outlined below are the high-level tasks that Navigant’s project team will achieve to provide DIFS with a high quality final APCD feasibility study report no later than June 30, 2014.

The detailed description of Navigant’s approach to completing the feasibility study and report is provided within the other Bidder Response boxes that follow.

Overview of Our Proposed Approach for Michigan’s APCD Feasibility Study Report

1. Research and analyze the current landscape in Michigan and other state approaches in regard to an APCD:

Navigant will begin the study by reviewing the current health care related databases available in Michigan; research available information related to other state APCD efforts and best practices; review relevant state and federal requirements related to privacy and security; and facilitate and capture stakeholder input. This research and analysis phase will be the basis upon which the most appropriate options for the State’s APCD will be chosen.

2. Organize the content, analyze business needs and formulate alternatives and options for the State in regard to an APCD:

Navigant will work with the State to clarify proposed goals and business needs of an APCD. We will identify and evaluate several implementation options for the State to consider, and we will summarize the key elements of each option, including business and technology requirements, associated risks and potential budget estimates.

3. Develop the final feasibility study report and lead presentations and discussions related to the proposed APCD:

We will compile the pertinent information collected during the feasibility study for the final report and coordinate and lead all presentations and discussions that will drive this project and assist the State as requested. A final report and presentation materials will be produced no later than June 30, 2014.

4. Manage the project:

We will manage all staff and resources allocated by the State to meet all milestones and deliverables within the agreed upon timeframes that are established at the start of this engagement.

5. Coordinate the efforts of state subject matter experts involved in this project:

Once the options are identified, we will work with State subject matter experts to gain consensus on the best approach and best APCD option for the State. At this point in the project, additional research may be identified by DIFS for Navigant to pursue. As an example, DIFS may request additional cost-benefits analysis and layout the proposed implementation project plan.

The proposed Navigant team provides the right mix of expertise and knowledge to successfully move the State of Michigan forward with alternatives and options related to an APCD that will align with DIFS’ mission and meet the business needs of the healthcare industry.



An overarching component of our feasibility study will be to address issues and costs associated with making the Michigan APCD compliant with ACA provisions, HIPAA regulations and all other privacy and security requirements.

1.022 Work and Deliverable

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

The contractor shall develop a report examining the feasibility of establishing an APCD in Michigan as described Section 1.021. The contractor must include the following information in the report, but not limited to:

- (a) A review of existing efforts across the United States to make health care cost and quality more transparent.
- (b) A review of proposed legislation in this state to make health care cost and quality more transparent.
- (c) A review of any existing standards governing the operation of similar databases.
- (d) A consideration of both price and quality of health care services rendered in this state.
- (e) Transparency and privacy issues.

Bidder Response: Bidder must provide a detailed work plan, identifying how it will accomplish the necessary work and provide the required Deliverables/Services.

Developing and sustaining an APCD can be a challenge, and taking the time to understand the current landscape related to data collection, seeking input from key stakeholders, learning best practices from other state APCDs and identifying the business needs of Michigan will enable the State to make the best decision regarding whether to implement such a system and if so, clarify the size and scope of the APCD.

As the APCD feasibility study begins, Navigant recommends creating a committee, if one is not already created, of key stakeholders to oversee the entire process of the design and implementation of the APCD. This committee can be charged with developing the framework and policies around the development and can include stakeholders that will assist in overcoming some of the challenges traditionally experienced when collecting data from multiple sources. Including the committee during the feasibility portion of the project will likely diffuse external tension that can be created when stakeholders are excluded in the design phase of projects.

APCDs are emerging as the central source of information for states implementing health reforms. Currently there more than 13 states that operate APCDs and collect data on healthcare utilization, costs and insurance information that can be used to inform consumers, researchers, employers, insurance carriers, providers, state government agencies and policymakers. This information can be used to understand variations in cost, utilization and quality; and identify opportunities to reduce costs while maintaining quality and access to care.

Furthermore, the ACA has issued requirements related to the health insurance rate review process, and APCDs may provide the insurance departments with the data and analytics necessary to justify health plan rate increases.

Navigant's proposed Project Manager, Cristine Vogel, has experience with APCDs and feasibility studies and also possesses a strong knowledge of ACA requirements. Prior to working for Navigant, Ms. Vogel served as a Commissioner with the State of Connecticut Office of Health Care Access. This background complements projects like Michigan's because she has an awareness of the interaction between state agencies, stakeholders and legislators.



She assisted the State of South Dakota with their feasibility study related to the implementation of a State-based Marketplace and recently assisted the State of Maryland with its APCD-related funding opportunity application for the U.S. Department of Health and Human Services (HHS) on Insurance Rate Review and Increase Transparency in Health Care Pricing.

Our Subject Matter Experts assigned to this project bring relevant experience in data analytics and patient privacy protections. Navigant has the resources to pull different skills and expertise as the project demands.

To achieve the work as outlined in the RFP, we propose the following four major tasks:

- *Task 1: Research and analyze the current landscape in Michigan and other state approaches in regard to an APCD*
- *Task 2: Organize the content, analyze business needs and formulate alternatives and options for the State in regard to an APCD*
- *Task 3: Develop the final feasibility study report and lead presentations and discussions related to the proposed APCD*
- *Task 4: Additional research based on the APCD feasibility recommendations*

Below is a description of the activities associated with each task. The Project Plan includes the milestones and deliverables and is included in 1.041.

Task 1: Research and analyze the current landscape in Michigan and other state approaches in regard to an APCD

Navigant's proposed approach to study the feasibility establishing an APCD in Michigan will include a review of best practices of APCD, identify other databases and data collection efforts throughout the State, review pertinent legislation and regulations and include key stakeholder input.

This first phase of the feasibility study will provide the State with a comprehensive view of the current environment and the current use of APCDs.

The following is the description of our proposed approach:

1. *Research and review other states' APCDs:* We will be reviewing information from several states that already have implemented APCD and highlight best practices and lessons learned related to designing, maintaining and financially sustaining an APCD. This research will include gathering the data type and elements, how the data is reported and what entities submit data.

Also during the review of state efforts, we will analyze the impact that the state's APCD has on healthcare cost and quality transparency. This information will be summarized and incorporated into the final report.

2. *Identify the data and information currently being collected throughout the State.* Our assessment of current databases will include those of state agencies, the hospital association, quality associations and similar institutions. We will collaborate with DIFS to identify the stakeholders that we will meet with, assist in scheduling the meetings, develop the questionnaire guide to be used during the meetings, facilitate meetings and summarize the meeting notes.

We recommend including stakeholders that represent the insurance carriers, employers, physician practices, hospitals, consumers and state agencies.

The questionnaire guide would include topics, including but not limited to:

- *How familiar is your organization with APCD and the uses of an APCD?*
- *What are your primary goals for improving health care quality and costs?*
- *What are some of the challenges in achieving these goals?*
- *How does your organization use health care data and what are some of your most important uses of such data?*
- *How could an APCD support your organization achieve the goals you identified?*
- *What is your understanding of barriers to collecting data and using data for an APCD?*
- *What are your thoughts regarding alternatives to using an APCD?*
- *What are your concerns regarding implementing an APCD in Michigan?*



Additionally, the questions that relate directly to the current data collection and databases in the State will include details about the specific data being collected. Below is a sample of the information that will be obtained at the stakeholder meetings.

Description Examples

Sources of Data Private insurance from the individual, small group and/or large group markets, Third Party Administrators (self-funded employers), Medicare and Medicaid

Types of Data Claims, eligibility files, physician files, pharmacy files, facility files, etc.

Types of Claims Physician, non-physicians, office-based, hospitalbased, radiology centers, ambulatory surgery centers, prescription, dental, visions, etc.

Data Elements Patient demographics, patient identifier, insurance type (HMO, PPO), principle diagnosis, procedure codes, revenue codes, service performed, date and place of service, amount charged, amount paid, coinsurance amount, etc.

Data Format Hard copy, Excel spreadsheet, etc.

Timing of Data Collected Annually, semi-annually, etc.

Current Use of Data Research, policy, performance metrics, etc.

3. Assess the limitations and gaps in current data collection: This qualitative research will lead to the development of the current data inventory. From this inventory, Navigant will be able to identify uses, limitations and gaps with the data being collected and the actual data collection processes. A portion of this inventory assessment will include the review of state and federal laws and regulations. The legislative review is essential in defining how existing data can be used and if other uses of the data are permitted. For example, the hospital association may provide hospital data to the State; however, the State may not be able to allow the transparent access to the public.

4. Review of state and Federal requirements: The research Navigant completes on other state APCD best practices (number 1 above) will also include a review of any state laws that have been enacted in response to increasing the transparency of data. We will bring in Navigant subject matter experts in the areas of transparency, privacy and security and summarize their input related to the sophisticated analytics necessary for the Health IT for Economic and Clinical Health (HITECH) Act. A critical component to this research and analysis phase will include the review of the existing privacy and security standards for the State and any pertinent federal regulations. Our subject matter experts in technology will provide the State with recommendations concerning oversight and governance standards related to data.

3. Assess the limitations and gaps in current data collection: This qualitative research will lead to the development of the current data inventory. From this inventory, Navigant will be able to identify uses, limitations and gaps with the data being collected and the actual data collection processes. A portion of this inventory assessment will include the review of state and federal laws and regulations. The legislative review is essential in defining how existing data can be used and if other uses of the data are permitted. For example, the hospital association may provide hospital data to the State; however, the State may not be able to allow the transparent access to the public.

4. Review of state and Federal requirements: The research Navigant completes on other state APCD best practices (number 1 above) will also include a review of any state laws that have been enacted in response to increasing the transparency of data. We will bring in



Navigant subject matter experts in the areas of transparency, privacy and security and summarize their input related to the sophisticated analytics necessary for the Health IT for Economic and Clinical Health (HITECH) Act. A critical component to this research and analysis phase will include the review of the existing privacy and security standards for the State and any pertinent federal regulations. Our subject matter experts in technology will provide the State with recommendations concerning oversight and governance standards related to data.

The following tasks are proposed to achieve Task 1:

Task Description

- 1.1 Present to DIFS the proposed states to be reviewed as related to best practices, type of data collected, etc.
- 1.2 Conduct research of the other state APCDs and summarize details from the analysis to incorporate within the final report
- 1.3 Identify data and information currently being collected throughout Michigan
 - 1.3.1 Collaborate with DIFS to identify the key stakeholders
 - 1.3.2 Develop the questionnaire guide to be used at the meetings
 - 1.3.3 Assist in scheduling the meetings or interviews
 - 1.3.4 Facilitate the stakeholder meetings
 - 1.3.5 Summarize feedback to include in the final report
- 1.4 Develop an inventory of all the existing data collected in the State
- 1.5 Identify limitations and gaps in the current data collection efforts in the State by comparing this information to general APCD requirements
 - 1.5.1 Prepare a Michigan APCD gap assessment and include in the final report
- 1.6 Review of State and Federal requirements related to data collections and privacy issues
 - 1.6.1 Review existing State laws related to data collection and privacy issues
 - 1.6.2 Review any proposed legislation in Michigan to make healthcare cost and quality more transparent and offer suggestions
 - 1.6.3 Review State and Federal standards related to governing the operations of APCDs including privacy and security, oversight and governance, data release and transparency
 - 1.6.4 Make recommendations related to what the operational standards should be for Michigan
 - 1.6.5 Summarize findings from the State and Federal requirements review to include in the final report

Task 2: Organize the content, analyze business needs and formulate alternatives and options for the State in regard to an APCD

This task focuses on organizing all the research and analyses findings from Task 1, identifying the necessary core functions and business requirements of an APCD for Michigan to develop alternatives and options moving forward.

Navigant will develop proposed key functions and business need requirements that would be likely essential to the Michigan-specific APCD. Although we realize that DIFS may not be committed to these identified functions and business requirements, having some high-level direction will enable the feasibility study to offer more relevant information for Michigan opposed to broad and general. Navigant will use the proposed goals and business need requirements of a Michigan APCD to develop the “future state” scenario to formulate alternatives and options.

Our next step is to identify alternative solutions that are available in developing an APCD that will provide the capability and value to the State. We will use our expertise and the research from other state APCDs to develop likely options. We recommend either issuing a Request for Information (RFI) to potential APCD vendors to assess capabilities and solutions or contacting several APCD vendors and interviewing them to do a qualitative review of their capabilities and solutions. Navigant would access its Subject Matter Experts on the APCD



technology and analytics and privacy and security. As a team, we will develop alternatives and options that have differing parameters, such as an incremental approach versus an inclusive approach. We will review each option and determine its feasibility based on a set of standards, such as: risks, implementation issues, technology and costs.

Although this feasibility study will not provide a thorough evaluation of the cost details of each solution, we will conduct a cost analysis for each solution for an estimation of implementation and on-going costs. Once the State has made some directional decisions regarding their APCD, a more detailed assessment that includes business requirements, specific data elements, reporting requirements and the integration of other state agencies using the database can be evaluated as “Additional Research” in Task 4 below.

The following tasks are proposed to achieve Task 2:

Task Description

- 2.1 Meet with DIFS to understand any goals of a Michigan APD to identify any necessary core functions and business need requirements
- 2.2 Review any available previous research or work related to APCD that that the State may have accomplished in the past
- 2.3 Propose to DIFS a basic strawman APCD that includes core functions and business needs to provide the feasibility study with some direction
- 2.4 Organize the qualitative research and other analyses obtained in Task 1
- 2.5 Obtain APCD vendor feedback on capabilities and solutions
- 2.6 Summarize the APCD vendor feedback to incorporate it into the final report
- 2.7 Formulate alternatives and options based risks, implementation issues, technology and costs to include in the final report

Task 3: Develop the final feasibility study report and lead presentations and discussions related to the proposed APCD

The final feasibility study report for the Michigan APCD will include the review and assessment of the current APCD landscape across the states, a review of legislation and governing standards to operate APCD to make healthcare cost and quality data more transparent and other analyses that highlight the implications that APCD have on both the price and quality of healthcare services in Michigan.

The report will also address some of the critical challenges and policy considerations that surround APCD design and development including:

- Willingness of payers and providers to submitting data
- Understanding the limitations of data collections
- Clarifying goals and how data will be used
- Identifying opportunities for data integration of multiple data resources
- Establishing an effective governance structure and committee infrastructure
- Managing the privacy and security components
- Standardizing and validating data collection
- Aligning timing of data collection around those using the analytics to make business decisions related to health insurance rate review and Marketplace QHP certification

The report will synthesize the stakeholder input regarding the opportunities, synergies, benefits, usefulness, challenges and potential issues of developing an APCD; and address the challenges related to privacy and security. There will be a portion of the report that will focus on the proposed uses of the data, financing options and operational considerations.

Finally, the report will identify alternative solutions that are available and provide the rationale for the recommendation most likely to meet the goals and business needs of the State. Navigant will provide preliminary findings and final recommendations at the request of the State. We will prepare the slides for the presentation in the event the State desires to present the feasibility study findings.

Specifically, the final Michigan APCD Feasibility Study Report will include sections



addressing the following topics:

- Current use of APCDs in selected states
- Overview of how states are making healthcare data on cost and quality more transparent
- Review of legislation proposed by other states that has enabled healthcare cost and quality data more transparent and suggestions for legislation in Michigan
- A review of Federal and state standards governing the operation of APCDs and similar databases
- Overview of privacy and security issues with data transparency
- Inventory of current data collections efforts in Michigan and stakeholder feedback
- Michigan's gap analysis of the current state of data collection to the potential future data collections requirements of an APCD

Lastly, Navigant will make recommendations for the preferred APCD solutions based on factors such as: capability alignment, technical fit, implementation time, resource cost and business and economic impact. We will submit the draft of the Michigan APCD Feasibility Report to DIFS no later than March 30, 2014 and the final report and recommendations by June 30, 2014. Navigant will prepare presentation materials and will be available to present at on-site meetings at the request of DIFS.

The following tasks are proposed to achieve Task 3:

Task Description

- 3.1 Draft the final report
- 3.2 Prepare draft and submit to DIFS by March 30, 2014
- 3.3 Present results from the preliminary draft report at an on-site meeting prior to March 30, 2014
- 3.4 Make revision to draft based on comments from DIFS
- 3.5 Prepare final report and recommendations and submit to DIFS by June 30, 2014
- 3.6 Prepare presentation materials and present when requested
- 3.7 Make presentation of the final report at an in-person meeting

Task 4: Additional research related to the APCD Feasibility Report as requested by DIFS

Navigant will be available at the request of DIFS to provide additional research related to Feasibility Study. Additional research may include some of the following studies and analyses:

- Short-term and long-term strategic plan for a Michigan APCD
- Assessing the State's current technical resources and potential future APCD technical requirements
- Assessing the current staffing resources and the potential future APCD staffing resources
- Developing a proposed APCD implementation plan including goals, objectives, milestones and timeline
- Developing a proposed program approach for the health insurance rate review process that incorporates the analytics of the APCD

Navigant has the ability to call in healthcare professionals with varied background to properly respond to the additional research request from the DIFS.

Deliverables for this project include:

1. Feasibility Study Draft by March 30, 2014
 - Including timeline, tasks, critical milestones, responsible parties, and project deliverables
 - Qualitative research and development
 - Draft presented at meeting (to be scheduled)
2. Review and Assessment Revisions by April 30, 2014



- Results of review and assessment
- 3. Recommendations and Final Report by June 30, 2014
 - Recommendation and feasibility of delivery of APCD
 - Final presentation at meeting (to be scheduled)
- 4. Additional Research through end of year or end of contract
 - Contract ends September 30, 2015

Bidder Response: Bidder must provide details identifying how it will accomplish and meet the required dates specified above and provide the required Deliverables/Services.

The Michigan APCD Feasibility Study has two major components:

- Conducting the feasibility study and producing the final report no later than June 2014
- Conducting additional research to support the DIFS with projects related to the final feasibility study

Navigant has organized a team that has the experience and varied backgrounds that will enable DIFS to quickly, yet comprehensively, understand what best practices and options exist in the current market related to APCD. The proposed Project Manager will be designated to this project at approximately 20 hours per week and on-site frequently with nearly fulltime support of the Policy Analysts, providing the work requires such coverage. Additional analysts and Subject Matter Experts are available to support this project if the need arises.

Navigant has provided the proposed work plan which includes four key tasks to achieve the goals as outlined in the RFP, and below has attached the proposed work schedule which depicts the timeline for the milestones to be completed.

The key deliverables include:

Project Management Deliverable Due Date

Schedule and conduct the initial kick-off meeting January 2014
and share contact information

Finalize the project plan and work schedule..... January 2014
and submit to DIFS

Prepare and submit Monthly Status Reports for Monthly
DFIS; and conduct monthly meetings
(in-person or via teleconference call)

Feasibility Report Deliverables Due Date

Feasibility Study Draft March 30, 2014

Recommendations and Final Feasibility Report June 30, 2014

Additional research pertaining to the Feasibility Study Through September 2015

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor will identify where Contractor staff will be physically located during the performance of this project. The Contractor will provide an overall organization chart referencing each title and detailed description of duties/roles of each position included in chart. The Contractors description of duties/roles should be functional and not just by title. The Contractor will identify all full-time and part-time personnel.

The Contractor will assign a company Project Manager to this project and include their full name, address, email, and contact telephone number.

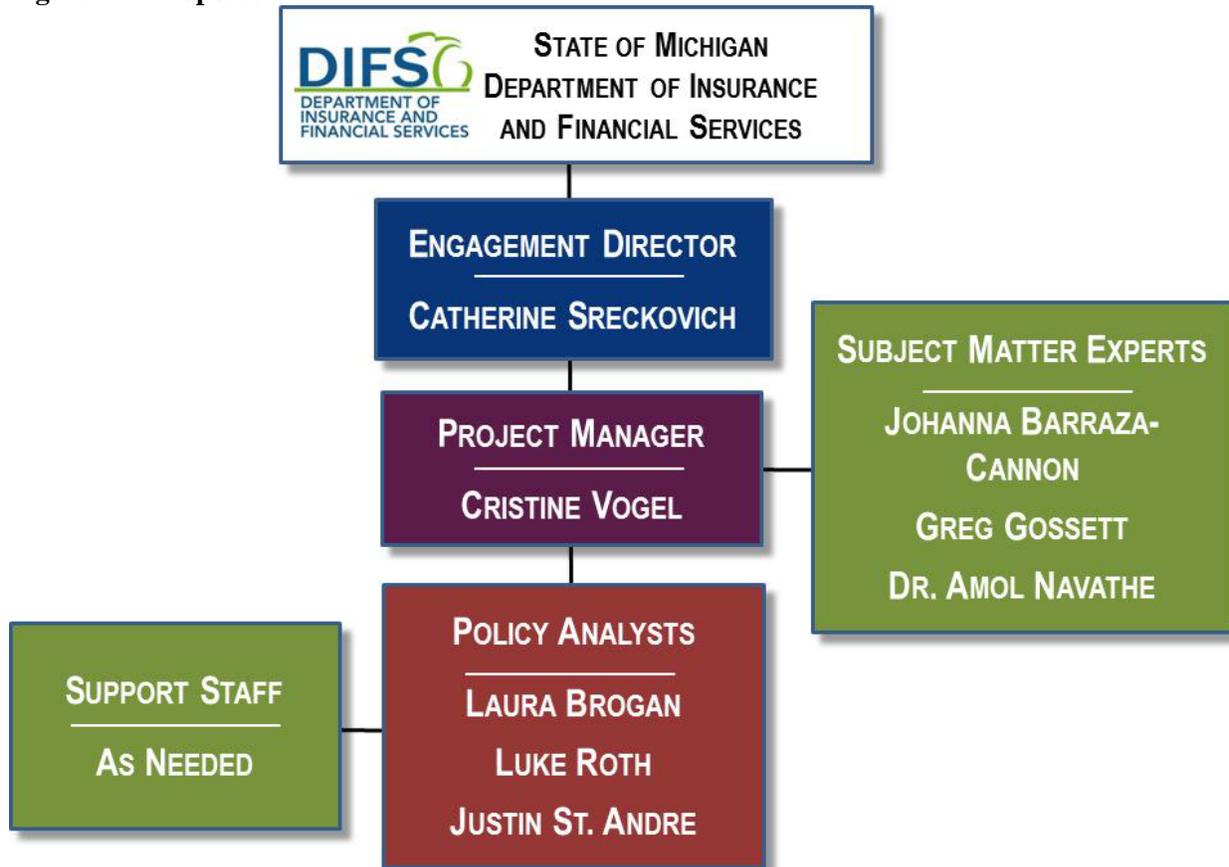
There may be times when contractor’s assigned staff may be required to work on-site or attend meetings at the DIFS office location at the Ottawa Building located at 611 W. Ottawa, Lansing MI 48933.



Bidder Response: The Contractor must include details of proposed staff as stated above in the bidder box below.

DIFS can look forward to a dedicated team throughout the duration of this contract. We envision the team as follows in Figure 1.1.

Figure 1.1. Proposed Team



Navigant Healthcare is a nationwide network of more than 600 dedicated healthcare consultants. Our ability to draw on professionals (from seasoned subject matter experts to junior staff) from all areas within our healthcare practice to fulfill the State's needs under this contract is unparalleled. When appropriate, Navigant provides junior staff with the requisite skills to support the project team.

Below we provide a listing of our proposed team members' skills, qualifications and roles relevant to this solicitation. Short biographies of each staff follow. Full professional resumes are included in Appendix A of this proposal.

Proposed Staff Roles and Responsibilities

Catherine Sreckovich, Engagement Director

- Overseeing the overall scope and direction of the engagement
- Providing industry expertise

Cristine Vogel, Project Manager

- Managing the overall project
- Managing the day-to-day tasks, serving as the DIFS point of contact and attending all meetings
- Providing industry expertise in the Affordable Care Act, Rate Review, Insurance Marketplaces
- Writing the report and presenting material
- Providing quality control on all deliverables



Laura Brogan, Policy Analyst

- Assist in research and policy analysis
- Organize research information from multiple sources
- Provide report writing support
- Assist with qualitative research

Luke Roth, Policy Analyst

- Providing industry expertise in claims data
- Providing support with the cost analysis

Justin St. Andre, Policy Analyst

- Attending key meetings
- Providing industry expertise in claims data
- Assisting with stakeholder assessment
- Assisting with APCD options development

Johanna Barraza-Cannon, Subject Matter Expert

- Expertise in HIPAA, HITECH, HIT and EHRs

Greg Gossett, Subject Matter Expert

- Expertise in health technology solutions

Amol Navathe, Subject Matter Expert

- Expertise in APCD and utilization of advanced health data analytics and technology

Proposed Staff Biographies

Catherine Sreckovich, a Managing Director with Navigant

Healthcare, will serve as Engagement Director. She has more than 30

years of experience in the healthcare industry and extensive experience working with healthcare payers, providers and health plans in the evaluation and development of healthcare delivery and reimbursement systems, healthcare compliance programs and healthcare reform options. She has worked with numerous types of government healthcare purchasing agencies in her career – federal agencies such as CMS, the Veterans Health Administration and TRICARE and state government agencies such as Departments of Health, Medicaid, CHIP, Substance Abuse Services, Behavioral Health, Developmental Disabilities, HIV programs, Breast and Cervical Care Program, Corrections and others.

She has worked with several states in the development and implementation of health insurance coverage expansions. She is well versed in the stakeholder challenges and the legal issues surrounding the APCDs and has provided assistance to states in addressing issues related to the development of an APCD. She has also directed feasibility assessments for many states in their assessment of implementation of new products and services. She was Engagement Director for the Exchange feasibility study in South Dakota and assisted in the feasibility assessment of a state based Exchange in Nebraska. Prior to joining Navigant, Ms. Sreckovich was a Vice President at Tucker Alan Inc. and a Partner at KPMG. She has also held positions with the American Medical Association, the Blue Cross Blue Shield Association and the Health Care Financing Administration (now Centers for Medicare and Medicaid Services).

Cristine Vogel, an Associate Director with Navigant Healthcare, will serve as Project Manager. She has more than 25 years of experience in

the healthcare industry and comprehensive knowledge of healthcare system planning, public policy and healthcare reform. She has expertise in Federal healthcare reform legislation with a solid understanding of its impact on health plans, consumers, providers, employers and state government. As a former Commissioner of the State of Connecticut Office of Health Care Access and the Special Advisor to the Governor, she was responsible for policy development and analysis of potential impact of the implementation of public policy. Ms. Vogel continually tracks the progress of states and implementation of Exchanges and develops thought leadership on the impact Exchanges will have on providers and health plans. She



has worked with several states in the planning and implementation phases of Exchanges including the South Dakota Feasibility Study, Nebraska Exchange establishment project and New York grant writing.

Ms. Vogel recently worked with the Maryland Health Care Commission to research and draft the funding application issued by the U.S. Department of Health and Human Services (HHS) for Insurance Rate Review and Increase Transparency in Health Care Pricing. She evaluated the current operations of the Maryland insurance rate review process and the current use of the APCD and proposed how the funding will support Information Technology and other resources to provide automated analytics to integrate data and improve the access to the data for use during the rate review process. This funding request focused on Insurance rate review process improvement, APCD integration with the insurance rate review process and healthcare pricing transparency.

Ms. Vogel researched progress made by other states with integrating APCD with the rate review process and how states that have an APCD currently use the data. She reviewed the current programs offered by Maryland that are supported with their existing APCD and solidified realistic approaches of how the APCD data can be useful and used during the insurance rate review process.

Laura Brogan, a Managing Consultant with Navigant Healthcare, will serve as a Policy Analyst. She has many years of experience in healthcare public policy and research, using methods including interviews, survey development, data analysis and literature reviews. She is currently providing policy support and technical assistance to the State of Illinois in its design plan for its Balancing Incentive Program, a Federal grant program. She is also conducting an evaluation of the State of Washington's rate methodology for persons with developmental disabilities through its Supported Living Program. She has experience in the evaluation of public policy, costs of new programs and the evaluation of feasibility of moving to new programs.

Prior to Navigant she worked with the U.S. Government Accountability Office, where she wrote and conducted research for non-partisan reports for Congress on various health policy topics, including Medicaid eligibility, benefits and financing; role of the All Payer Claims Databases, Medicare Part D; health reform; Recovery Act funding for states; private insurance markets; pre-existing condition insurance plans; consumer-driven health plans; and children's mental health services. She has led projects involving large hospitals, health systems and clinical professionals.

Luke Roth, a Managing Consultant with Navigant Healthcare, will serve as a Policy Analyst. He has more than seven years of experience consulting with healthcare payers and providers on wide range operational and financial topics such as health plan design and pricing for public and commercial populations, payer/provider contract review, negotiation and communication strategy, as well as the implementation of care management programs and initiatives.

Mr. Roth has worked extensively in quantitative analysis, including reimbursement analyses and benchmarking, budget projection and budget impact modeling for large health systems, State Medicaid agencies and the Department of Veterans Affairs, predictive modeling, including regression analyses, stochastic, Monte Carlo and other statistical modeling techniques and cost and utilization trend analyses for a wide variety of benefits and populations. He has significant experience developing complex financial modeling solutions for a wide variety of healthcare related applications, in SAS, SQL and Excel environments.

Justin St. Andre, a Managing Consultant with Navigant Healthcare, will serve as a Policy Analyst. He brings extensive experience in healthcare project leadership, statistics and data management. He is proficient in SAS, STATA, SPSS and Statistica. His data analytics experience includes management of national healthcare datasets including Medicare, Medicaid and Veterans Healthcare Administration (VHA) data as well as



work with large databases including NHSN, Hospital Compare, Nursing Home Compare and VHA databases and cubes. He has overseen data management and analysis of national hospital quality improvement initiatives to reduce harm and readmissions.

Johanna Barraza-Cannon, an Associate Director with Navigant

Healthcare, will serve as a Subject Matter Expert.

She has 15 years of healthcare experience and in-depth knowledge of Medicaid waivers, health information technology (HIT) and the administration of the Medicaid Electronic Health Record (EHR) Incentive Programs. Ms.

Barraza-Cannon has extensive experience assisting state health and human services agencies on healthcare program and policy reform design and implementation and is currently assisting senior state health and human services officials to identify and develop major reform initiatives including reforms to Medicaid, social services, reforms required under the ACA and other public welfare benefits.

Prior to joining Navigant Consulting, Ms. Barraza-Cannon served as the Director of the Office of Health Information Technology (OHIT) at the Health Resources and Services Administration (HRSA) and Technical Director for the Children's Health Insurance Program (CHIP) at the Centers for Medicare and Medicaid Services (CMS) where she gained extensive experience in health information technology (HIT) and with safety net providers.

In addition to her expertise in HIT, Ms. Barraza-Cannon has extensive experience in the Medicare and Medicaid Electronic Health Record Incentive Program, Medicaid and CHIP policy, analyzing health care regulations and policy issues, conducting research and data analysis, and developing white papers, briefs and reports to Congress.

Greg Gossett, a Director in Navigant's Healthcare Technology

Solutions practice will serve as a Subject Matter Expert.

With over 17 years of information technology experience, he leads a group focused on innovative healthcare solutions that address current,

reform-driven needs of providers. In addition to holding senior-level positions with other major consulting firms, Mr. Gossett helped design HealthAware, an award winning, early detection solution reaching over 700,000 individuals across 43 states.

Mr. Gossett and his Technology Solutions team have worked with over 250 providers throughout the U.S. to deploy solutions related to early detection, market share growth, data mining, revenue cycle, practice management, and coding/documentation.

Amol Navathe, MD, PhD, a Managing Director with Navigant

Healthcare, will serve as a Subject Matter Expert.

Dr. Navathe is a practicing physician, health economist and engineer with an expertise in the utilization of advanced health data analytics and technology to improve healthcare delivery. He has applied his skills to healthcare

redesign and innovation, federal policy for comparative effectiveness research data

infrastructure development and the study of physician and hospital economic behavior. In

addition to his clinical and academic roles, his entrepreneurial activities including serving as

Chief Medical Officer for a medication adherence startup, Founding Co-Editor-in-Chief for a

new journal "Health Care: the Journal of Delivery Science and Innovation," and Founding

Director of the Foundation for Healthcare Innovation.

1.040 Project Plan

1.041 Project Plan Management

The Contractor must propose a project plan as stated above in the work and deliverables of this RFP. The project plan should include a proposed timeline, tasks, critical milestones, and responsible parties. The Contractor must provide a project management plan, identifying methods, tools and processes proposed to oversee this project, address issues/changes as they may arise, and keep the Project Manager and Buyer as listed in Section 2.020, apprised of all progress for the entire duration of this project.



Bidder Response: The Contractor must include in detail proposed project plan as stated above in the bidder box below.

We recognize the importance of upfront planning and frequent contact with clients so that our project work reflects their priorities. We work to maintain flexibility in our approach and present our proposed approach to clients prior to beginning work on a contract or on a new phase of work.

For example, during the project kick-off meeting, we will discuss our project management approach, including quality control and internal team coordination, client communication, exchange contact information with the key point people at the DIFS and discuss other administrative issues agreed to as part of the agenda setting for the meeting. By doing so, we can achieve DIFS' goals while working within the budget and other constraints.

During our kick-off meeting we can determine the frequency of contact with which DIFS is comfortable. We will also identify the modes of communication that the DIFS project lead is most comfortable using, (e.g., when email is appropriate versus conference calls or webinars) and what issues are best discussed and resolved on-site and in person.

Our project team of professionals, under the leadership of the Engagement Director and Project Manager, is experienced in proactively identifying and anticipating risks and problems before they occur and identifying possible remedies. In the event our project team identifies issues, we will concurrently notify the DIFS project manager and provide information and options for determining next steps. The Monthly Status Reports will also be leveraged to update DIFS about potential risks / challenges accompanied by remediation recommendations.

The Project Plan and Work Schedule

Navigant's project plan and work schedule will provide DIFS with target dates and a list of key milestones and identify key point people responsible for the completion of each milestone or deliverable. DIFS will be able to use our project plan to identify and track the critical path of events to completion. The project plan is intended to be a living document that Navigant will use in concert with DIFS to manage project activities and specify deliverables and staffing. Navigant will review and make any necessary revisions to the project plan on a biweekly basis unless more frequent updates are required.

On the next pages, we provide a high-level work schedule for the project plan for the portion of the feasibility study that will occur from January 2014 through October 2014. We realize that the project may continue through September 2015, but since that work will be determine at a later date we did not provide it within the below work plan.



1.042 Reports

The Contractor will be required to provide a written monthly progress report. The monthly progress report will be submitted to the Project Manager as listed in Section 2.020, throughout the life of this project.

Each monthly progress report must contain the following:

1. **Hours:** Indicate the number of hours expended during the past two weeks, and the cumulative total to date for the project. Also state whether the remaining hours are sufficient to complete the project.
2. **Accomplishments:** Indicate the status of each task that has been worked on, what task was completed, and deliverables provided during the current reporting period.
3. **Funds:** Indicate the amount of funds expended during the current reporting period by category and the cumulative total to date for the project.

The contractor will meet with the Project Manager on an as needed basis as determined by the Project Manager to review monthly progress report, open issues and plans to address any concerns.

The Contractor will identify and explain any deviations from the required reporting as stated above in this RFP. The Contractor should provide with their proposal response to the above listed requirements, identifying standard reports available, and noting where customization is necessary. The Contractor should include a sample copy of their proposed report with their proposal. The Contractor should also include any other proposed reports as they relate to the work and deliverables for managing the project.

Bidder Response: The Contractor must include in detail as to how company will meet all reporting requirements as stated above in the bidder box below.

The Navigant Project Manager will have frequent contact with the DIFS project manager on an as-needed basis. Navigant will be on-site on a regular basis especially during the stakeholder interviews and the monthly progress reports. Because of the quick turnaround time of the feasibility study (beginning in January and producing the first draft no later than March 30, 2014), Navigant recommends having more frequent progress reports – we refer to these as bi-weekly status updates.

Bi-Weekly Status Updates and Monthly Progress Reports

Using the Project Plan as the baseline, Navigant will provide bi-weekly status updates that summarize the progress of the Navigant team's completion of individual project plan tasks and identify, track and provide resolution associated with any potential issues. Navigant will provide a monthly written report that summarizes progress against milestones, next steps, timelines, targets, hours expended, accomplishments, funds expended, barriers and other pertinent information. We will present the Bi-weekly Status Updates and the Monthly Progress Reports orally to DIFS at regularly scheduled status meetings either in person or by teleconferences. All updates and reports will be submitted to DIFS in writing as well.

Deliverable Development

We will work with the DIFS project manager to confirm the expectations for the content and format of deliverables for this contract. Our typical deliverable approach is to create an outline of our deliverable for review with the client and then continue to develop a more detailed outline as the project progresses. Deliverables will be submitted in draft form to DIFS with sufficient time to allow a thoughtful, coordinated review.

We recognize that the deliverables in this case may be subject to review by multiple parties, and we will arrange the timeline and schedules to accommodate these reviews. We request that the DIFS project lead actively participates in the deliverable process so all comments may appropriately be considered for inclusion in the final deliverables.

Quality Assurance

Navigant is committed to quality control and has instituted many processes and controls for



all deliverables so that they are of high quality and meet the requirements set forth by DIFS.

Staffing

Navigant emphasizes a team-based approach for all of our engagements, with staff working together to complete tasks efficiently while developing a comprehensive high-quality work product. Our Engagement Director, Project Manager and project team members will draw on their vast industry experience to determine the robustness and accuracy of all analyses, while Subject Matter Experts on our team may be asked to lend their focused experience to examine all possible options and identify alternatives most suitable for DIFS' needs.

We understand that there is no value in a deliverable if the data and analyses used to create it are compromised. We take pride in our ability to deliver comprehensive, accurate analyses to clients. Our project management structure serves as the backbone for our efficient and reliable internal control processes. The team's combination of policy and data analysis experts will confirm that our work is qualitatively and quantitatively sound in each step of the projects under this contract.

Our Engagement Director will review and approve all draft and final draft deliverables before they are submitted to DIFS. As mentioned above, we will provide deliverables in draft format to the DIFS project lead and other appropriate staff for review and approval. It is our practice to provide these drafts with enough lead time to allow for discussion and feedback before deliverables are finalized.

Project Efficiency

Navigant has a long history of work plan management. We have worked with many clients to outline project tasks and estimate timeframes for completing each of those tasks. Navigant manages its project efficiency by tracking hours and progress and by regularly comparing budget consumption (both dollars and time) to project completion percentages. When estimating project completion timeframes, our project team members will consult with our Project Manager and other team members as applicable to identify the necessary activities for completing the tasks. Frequent communication is essential for keeping the project on task and identifying any problems that arise as well anticipating potential issues. It is our standard practice to communicate any issues to our clients upon identification so that they can be addressed.

Navigant is committed to providing the required services under this contract and has qualified resources available to meet the DIFS's deadline for the final report in June 2014. Our proposal will demonstrate that our professionals have the required education, knowledge, skills and experience requested in the RFP. Resumes for our proposed project staff can be found in Appendix A.

The proposed activities associated with Project Management are described below.

Activity Description

- 1 Schedule and conduct the initial kick-off meeting and share contact information
- 2 Discuss project approach, work plan and expectation of deliverables; revise timeline as needed
- 3 Finalize the project plan and work schedule and submit to DIFS
- 4 Confirm the format and schedule for the Bi-Weekly and Monthly Status Reports
- 5 Conduct bi-weekly meetings
- 6 Prepare and submit Monthly Status Reports for DIFS; and conduct monthly meetings (in-person or via teleconference call)

Project Management Deliverables:

- Final Project Plan and Work Schedule
- Bi-weekly Status Updates
- Monthly Status Reports



1.050 Acceptance

1.051 Criteria

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

The contractor will be required to obtain Project Manager sign-off for each monthly report. The Contractor will be required to complete each deliverable as stated in this RFP. Acceptance of each task and deliverable as stated in the SOW, Work and Deliverables will be reviewed by the Project manager. The contractor must provide any acceptance criteria as part of its bid response to this RFP.

1.052 Final Acceptance

Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance. The contractor must obtain final acceptance of the project by the Project Manager.

1.060 Proposal Pricing

1.061 Proposal Pricing

Bidder must list detail of compensation proposed, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. Bidder must break down costs by acceptance of Deliverables, time periods, invoicing, labor vs. non-labor, etc. as appropriate to the subject of the SOW.

For authorized Services and Price List, see Attachment A.

Bidders are encouraged to offer quick payment terms (i.e. _____% discount off invoice if paid within _____ days). This information can be noted on the Bidders price proposal (see Attachment A). This may be a factor considered in our award decision.

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

The selected Contractor will be required to submit an Administrative Fee (see Section 2.031) on all payments remitted under the Contract. The Bidder should consider Administrative Fee requirements when developing its price proposal.

Extended purchasing program volume requirements are not included, unless stated otherwise.

1.062 Price Term

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

1.063 Tax Excluded from Price

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

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

1.064 Holdback—Deleted-Not Applicable



1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP

Bidder must provide any additional statements/comments/concerns it has about the information requested or anything that it believes should have been addressed, but was not included in the RFP.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 1 year and nine months, beginning January 1, 2014 through September 30, 2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

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

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

2.007 Headings

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

**2.008 Form, Function & Utility**

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration**2.021 Issuing Office**

The Contract is issued by the Department of Insurance and Financial Services, Office of Financial and Administrative Services. DIFS-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **DIFS-Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DIFS-Procurement for the Contract is:

Darcie Payne
Department of Insurance & Financial Services
Office of Financial and Administrative Services
611 W. Ottawa, 3rd Floor, Lansing MI 48933 (street address)
P.O. Box 30013, Lansing, MI 48909 (mailing address)
Phone: (517) 373-4776
Fax: (517) 335-1439
Payned3@michigan.gov

2.022 Contract Compliance Inspector

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

Randall S. Gregg
Director & General Counsel
Office of General Counsel
611 W. Ottawa St., 3rd Floor
Lansing, MI 48933
(517) 373-0435



Greggr2@michigan.gov

2.023 Project Manager

The following individual will oversee the project:

Randall S. Gregg
Director & General Counsel
Office of General Counsel
611 W. Ottawa St., 3rd Floor
Lansing, MI 48933
(517) 373-0435
Greggr2@michigan.gov

2.024 Change Requests

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

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

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DIFS-Procurement.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

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

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties



The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors is an employee, agent or servant of the State. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

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

2.029 Assignments

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

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

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

2.030 General Provisions

2.031 Administrative Fee and Reporting—Deleted-Not Applicable

2.032 Media Releases

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

2.033 Contract Distribution

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

2.034 Permits

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

2.035 Website Incorporation

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

**2.036 Future Bidding Preclusion**

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

2.037 Freedom of Information

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

2.038 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

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

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

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.



The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

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

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor



must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

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

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

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

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

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

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

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

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

2.064 Contractor Personnel Location

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

**2.065 Contractor Identification**

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

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. The Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities.

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

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

2.072 State Consent to Delegation

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

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not



subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities

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

2.090 Security

2.091 Background Checks

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

2.100 Confidentiality

2.101 Confidentiality

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



confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

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

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

2.103 PCI Data Security Standard

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

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

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

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

2.104 Exclusions

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

**2.105 No Implied Rights**

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

2.106 Security Breach Notification

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

2.107 Respective Obligations

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

2.110 Records and Inspections**2.111 Inspection of Work Performed**

The State's authorized representatives have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed at any time. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records

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

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

2.113 Examination of Records

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

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

2.114 Audit Resolution

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

2.115 Errors



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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

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

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

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

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

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

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

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

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

2.122 Warranty of Merchantability

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



Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty

To the extent Contractor is responsible under the Contract for maintaining equipment/system(s), Contractor must maintain the equipment/system(s) in good operating condition and must undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in the Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in the Contract, when installed, at the time of Final Acceptance by the State, and for a period of one year commencing upon the first day following Final Acceptance.

Within five business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under the Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties. All warranty work must be performed on the State of Michigan worksite(s).

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

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

2.128 Consequences For Breach



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

2.130 Insurance

2.131 Liability Insurance

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

- (a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
- (g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (h) The Contractor must provide, within five business days, written notice to the Director of DIFS-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
- (i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (j) The Contractor is responsible for the payment of all deductibles.
- (k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
- (l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (m) The Contractor is required to pay for and provide the type and amount of insurance checked below:

(i) Commercial General Liability

Minimal Limits:

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

Deductible maximum:

- \$50,000 Each Occurrence

Additional Requirements:

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

 (ii) Umbrella or Excess Liability
Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

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

 (iii) Motor Vehicle
Minimal Limits:

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

 (iv) Hired and Non-Owned Motor Vehicle
Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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

 (v) Workers' Compensation Insurance
Minimal Limits:

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

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

Additional Requirements:

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

 (vi) Employers Liability
Minimal Limits:

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

Additional Requirements:

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

 (vii) Employee Fidelity (Crime)
Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

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

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

 (viii) Professional Liability (Errors and Omissions)
Minimal Limits:

\$3,000,000 Each Occurrence

\$3,000,000 Annual Aggregate

Deductible Maximum:

\$50,000 Per Loss

 (ix) Medical Malpractice
Minimal Limits:Deductible Maximum:

\$5,000 Each Occurrence

 (x) Cyber Liability
Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

Additional Requirements:

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

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

 (xi) Property Insurance

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

2.132 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.13.1,



Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.133 Certificates of Insurance

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

2.140 Indemnification

2.141 General Indemnification

The Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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



Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

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

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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure



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

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise



unavailable, the State may, upon 30 days notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

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

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

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

2.158 Reservation of Rights

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



2.160 Reserved

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.



2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

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

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

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

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



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

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

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

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment



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

2.204 Prevailing Wage

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

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation



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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

2.232 Call Center Disclosure

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

2.233 Bankruptcy and Insolvency

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

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



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

2.240 Performance

2.241 Time of Performance

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

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

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

2.242 Service Level Agreements (SLAs)

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

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

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

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

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

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

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

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

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

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the



State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

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

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

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

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition



described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

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

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

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

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



consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

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

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

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services



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

2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

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

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights

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

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or



other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.274 Electronic Receipt Processing Standard

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

2.280 Extended Purchasing Program

2.281 Extended Purchasing Program—Deleted-Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision—Deleted-Not Applicable



2.300 Other Provisions

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

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

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



Attachment A, Price Proposal

Deliverables	Estimated Completion Date	Staff/Resources	Hours	Rate	Cost
Qualitative Research/Development	3/5/14	Managing Director	9	295	2,655
		Director	5	295	1,475
		Associate Director	120	285	34,200
		Managing Consultant	240	250	60,000
		Senior Consultant	240	200	48,000
		Consultant	300	175	52,500
Subtotal					198,830
Data Analysis	3/14/14	Managing Director	-	295	-
		Director	-	295	-
		Associate Director	60	285	17,100
		Managing Consultant	200	250	50,000
		Senior Consultant	200	200	40,000
		Consultant	240	175	42,000
Subtotal					149,100
Draft Recommendation by March 30, 2014	3/30/14	Managing Director	20	295	5,900
		Director	10	295	2,950
		Associate Director	60	285	17,100
		Managing Consultant	40	250	10,000
		Senior Consultant	100	200	20,000
		Consultant	100	175	17,500
Subtotal					73,450
Review and Revisions by April 30, 2014	4/30/14	Managing Director	-	295	-
		Director	-	295	-
		Associate Director	20	285	5,700
		Managing Consultant	20	250	5,000
		Senior Consultant	40	200	8,000
		Consultant	40	175	7,000
Subtotal					25,700
Final Report & Recommendations by June 30, 2014	6/30/14	Managing Director	5	295	1,475
		Director	5	295	1,475
		Associate Director	40	285	11,400
		Managing Consultant	40	250	10,000
		Senior Consultant	80	200	16,000
		Consultant	80	175	14,000
Subtotal					54,350
Additional Research through September 30, 2015	On-going	Managing Director	-	295	-
		Director	-	295	-
		Associate Director	50	285	14,250
		Managing Consultant	50	250	12,500
		Senior Consultant	180	200	36,000
		Consultant	200	175	35,000
Subtotal					97,750
TOTAL					599,180



Bidders are encouraged to offer quick payment terms (i.e. 1 % discount off invoice if paid within 10 days).

Navigant affirms that through the submission of this pricing proposal, we certify that all services listed in the Specifications of this RFP will be provided at the pricing quoted above and pricing for this RFP will be honored for a period of 120 days.

Catherine Sreckovich Managing Director 11/6/13
Authorized Company Representative (Signature)/Title (Date)

Catherine Sreckovich, Managing Director _____
Print name/title here

36 4094854 Upon contract award, we will establish EFT processing.
Bidder State FEIN ID# EFT (circle one) Yes or No