

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. 071B6600082
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Simons-Michelson-Zieve, Inc dba SMZ 1200 Kirts Blvd. Suite 100 Troy, MI 48084	Jamie Michelson	jamiemichelson@smz.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	Direct: (248) 269-4345 Cell: (248) 219-9596	*****

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER:	Lottery	Tim Shafer	(517) 335-1509	shafert@michigan.gov
BUYER:	DTMB	Mary Ostrowski	(517) 284-7021	ostrowskim@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
General Advertising Services – Michigan Lottery			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
2 Years	May 20, 2016	June 30, 2018	3 – One Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$34,000,000	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007116B0006939. 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 #: 071B6600082

FOR THE CONTRACTOR:	FOR THE STATE:
_____ Firm Name	_____ Signature
_____ Authorized Agent Signature	_____ Name/Title
_____ Authorized Agent (Print or Type)	_____ Enter Name of Agency
_____ Date	_____ Date

STATE OF MICHIGAN
Contract No. 071B6600082
General Advertising Services – Michigan Lottery

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

Project Request

This is a Contract for Marketing and Advertising Services for the Michigan Bureau of State Lottery (Lottery), other State Departments and MiDEAL members (authorized local units of government). The Contractor must primarily provide Marketing and Advertising Services to Lottery.

The effective date of the Contract is May 20, 2016 through June 30, 2018. The period of May 20, 2016 through June 30, 2016 will be for implementation. The services start date is July 1, 2016.

Scope

The Contractor must provide marketing, promotion, and advertising services which will maximize net proceeds from the sale of lottery tickets. The Contractor must ensure that its advertising and promotional efforts are in good taste and serve to confirm the credibility and integrity of the Lottery.

The Contractor will be primarily responsible for supporting the marketing strategy and plan for instant games, pull-tab games, and draw games by providing expert creative, marketing strategy and planning, media planning and buying, trafficking, production, personnel, and/or subcontractors. The Contractor may occasionally be assigned off-line marketing tasks in support of Lottery online games, as well. The Contractor will work in tandem with various Lottery marketing staff to assist in planning, designing, and execution of the Lottery's marketing activities.

The Lottery's budget for general advertising services in fiscal year 2016 is approximately \$17 million. This amount is subject to annual appropriation by the State Legislature. The determination of how and when advertising and promotion funds are spent rests with the Lottery.

It is incumbent upon the Contractor to develop programs and promotions that, in the view of the Lottery, warrant the expenditure of funds. During fiscal year 2015, the Lottery spent approximately \$17.6 million on advertising and promotion efforts, as follows:

TV	\$5,276,285
Radio	\$5,133,578
Out of Home	\$1,815,734
Sports Sponsorships	\$1,169,931
Point-of-Sale	\$1,614,969
Broadcast Production	\$488,568
Print Media	\$547,926
Digital Media	\$860,111
Other*	\$714,611
Total	\$17,621,713

* Includes research, public relations expenditures, miscellaneous advertising production, and miscellaneous promotional expenses. Some of these expenditures are made through the Contractor; others are handled directly by the Lottery.

The distribution of marketing/advertising expenditures is subject to change depending on the Lottery's market strategies, requirements and needs during any given fiscal year. In past years the Lottery has implemented programs involving the following strategies and activities:

- second chance sweepstakes
- coupon promotions
- event activations
- bonus payout promotions
- retailer incentives
- winner awareness campaigns
- "umbrella" product campaigns
- new game introductions
- sports sponsorships
- seasonal campaigns
- product enhancement campaigns
- product maintenance campaigns
- jackpot awareness campaigns.

The Lottery reserves the option to modify strategy or budget allocations as the market warrants and in response to changes to legislative appropriations. The Lottery shall always retain final authority for determining allocations of funds, strategies, plans, and campaigns.

Primary Objectives:

1. Achieve maximum effectiveness and efficiency in expenditures for marketing, promotion and advertising services, supplies, and materials;
2. Maintain the public trust and confidence in the Lottery and its operations;
3. Plan, develop and execute in a timely manner, marketing, promotion and advertising programs, strategies and projects that will stimulate interest, excitement, and participation in Lottery products;
4. Work with the Lottery as a team to plan marketing strategies;
5. Be sufficiently flexible to adapt to the Lottery's changing needs over the term of the agreement;
6. Assist the Lottery in identifying opportunities to add new products and/or enhance existing products in a pro-active manner.

Background

The Lottery is a major revenue producer for the State of Michigan with headquarters located in Lansing, Michigan. Lottery's statutory mandate is to maximize net revenues for the State consistent with the general welfare of the people. The Lottery provides quality entertainment to the public consistent with statutory mandates and maintains Lottery's integrity by projecting a positive image. Under the statutory mandate, the Lottery oversees games of chance such as instant games, pull-tab games, draw games, and online games. In fiscal year 2015, sales are expected to exceed \$2.7 billion. Current Lottery games offered and related information can be found on the Lottery's website at www.michiganlottery.com.

1. Requirements

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

1.1 Marketing

A. Provide assistance in conducting an in-depth business analyses including comparisons with retail consumer packaged goods and other state lotteries.

The Contractor's Planning Process will answer the following questions:

1. *Where are we;*
2. *Where do we want to be;*
3. *How do we get there strategically;*
4. *How do we get there creatively; and,*
5. *How are we doing?*

Step 1: Perform in-depth business analysis, including comparisons with other state lotteries.

Step 2: Analyze the external environment in which the Lottery operates and the rapidly changing market conditions which include: economic factors; competitive factors (share of entertainment dollars); and, consumer mindset and behavior.

In addition, the Contractor must monitor online retail purchasing shifts and their impact on Lottery retailers and potential sales.

Step 3: Ensure a clear understanding of the Lottery's mission.

Step 4: Translate this mission into measurable objectives that serve as the basis for planning.

Strategies will detail how the objectives will be achieved and serve to provide direction for all areas of the marketing plan by addressing how to allocate resources and activities.

The Contractor will use the following product-by-product strategies:

- Consideration of demographic, behavioral and attitudinal insights.
- Consideration of the geographic area (for example urban vs. rural), familiarity with the products, regional differences and potential.
- Consideration of the product life cycle. Proactive strategies must involve maintaining a core portfolio of games, then frequently enhancing those games with effective promotions and value-added options, so players continue to play favorite games and try new ones.
- Push strategies for product sales focused on retailer support and pull strategies focused on advertising and promotion to stimulate consumer demand.
- The mindset of the traditional and new generations of players to achieve the right balance between social responsibility and growth.

- B. Provide extensive assistance in the development of the Lottery's annual marketing plan, including a product-by-product strategy, product sales goals, key activities, time frames, and estimated budgets.**
- C. Counsel the Lottery on all marketing, promotion, and advertising-related decision-making including new product development, game enhancements, and sales promotions.**

The Contractor will provide strategic and tactical options for Lottery consideration for all games.

- D. Utilize research information to identify and evaluate market and sales development opportunities (also see Section 1.6).**

Contractor Research includes but is not limited to:

1. Contractor experience
2. Gaming industry data in trade journals, newspapers and other publications
3. Descriptions of how and why other states are introducing new games, developing new products, and changing their advertising and promotion strategies
4. Media coverage and position papers that address the conflicts arising when broad public support and the ability to generate substantial revenue meet the moral objections and concerns of activists
5. Consumer research undertaken by the Michigan Lottery and others
6. Discussions with other state lottery bureaus, as well as with major partners such as advertising agencies, retailers, and suppliers
7. Discussions with Michigan Lottery retailers about sales support, in addition to observing, first-hand, their lottery displays and point-of-sale materials posted
8. Worldwide lottery information available on the Internet.

1.2 Media

- A. Develop individual media plans for projects and promotions identified in the annual marketing plan. Detailed rationale, time frames, and budgets must be included to support all elements in the plan.**

The Contractor's media plans will include:

1. Budget parameters
2. Consider audience to be reached
3. Project timing
4. Regional and local market coverage priorities
5. Opportunity markets

6. Anticipated promotional activities
7. Process for evaluation

The Contractor's Media strategy will include flighting, geography (markets), delivery goals, and a full rationale. The Contractor will look to have a continuous program, where there is a consistent presence for each campaign. If needed, the Contractor will look to flighting where the Contractor runs media for a defined period of time and have hiatus periods in between flights. The Contractor will work to have as many "on" weeks as the budget will allow. Geography and markets will assist in the determination of where the advertising will run, from statewide coverage to market prioritization. The Contractor will obtain Lottery Program Manager approval for timetables, budgets and media vehicles as provided in comprehensive media proposals prior to any actual placements.

The Contractor will plan and place media well in advance of each promotion in order to guarantee the best possible inventory at the best possible price.

- B. The Contractor is required to prepare media plans for all individual media campaigns. No later than two weeks prior to a media buy, the Contractor shall provide copies of the negotiated buy (including value-added opportunities submitted by stations free of charge) to the Lottery for approval consideration. Once these media plans are reviewed and approved by Lottery, the Contractor will proceed with developing individual media buys based on the media plans. The Contractor is required to submit these media buys to the Lottery Program Manager for review and approval.**

The Contractor's media plan preparation is outlined in Exhibit A, Section 1.2.A and 1.2.C. Once the plan is completed and approved by the Lottery Program Manager, the Contractor planner meets with the Contractor buyers to review the flighting, geography, goals, budgets and any additional information so they may put together the most effective and efficient broadcast schedules for the Michigan Lottery.

The Contractor's buyers will send out an "avail request" to all stations with all of the necessary guidelines including flighting, geography, dayparts and campaign goals. For television, the stations will send back their first round schedules including programming, initial rates and suggested GRPs for each program. The Contractor's buyers will utilize all information that the stations send, as well as Nielsen historical ratings, HUTs (Households Using TV) and PUTs (Persons Using TV) to estimate their own ratings for that future program. The Contractor's buyers will then send those ratings and corresponding GRPs back to the station with an idea of where the market is coming in / where the stations need to be for each daypart. The stations will send their final costs and any particular program ratings they don't agree with back to the Contractor buyer. Next, the buy is developed, set aside, re-looked at/analyzed and completed. The Contractor buyer will take a step away and then go back to assist in ensuring the best schedule has been built for the Michigan Lottery.

For radio, the stations will send back their proposed schedules with ratings based on the most recent two or three surveys. There are not projections in radio, only in TV. The Contractor buyers will then select the best stations, not only based on ratings and competitive CPPs (cost-per-points), but based on the best stations to reach the Michigan Lottery demographic. . Next, the buy is developed, set aside, re-looked at/analyzed and completed.

Once the schedules are complete and ordered with the stations, each station will send back their added value which can come in many forms such as additional spots, sponsorships, billboards, and digital. The Contractor requires all stations to provide added value.

- C. Provide in-depth evaluation of all media vehicles (radio, television, print, outdoor, digital, etc.) available to the Lottery throughout the State with every media buy, as requested by the Lottery.**

The Contractor's media planners must consider any means by which the Lottery's messages can be communicated. The Contractor will determine and recommend the most efficient and effective media vehicle or combination of media vehicles for every message and will have no built-in bias toward television, radio, print, outdoor, Internet, or the latest and greatest technological option. The key will be efficacy. If a media option adds efficiency and effectiveness, Contractor will pursue it.

The Contractor will employ a wide variety of media tools to ensure the most up-to-date media and consumer data to ensure that our negotiation and evaluation of media alternatives is fact-based at all times. The Contractor's media research resources include but are not limited to: Nielsen, Arbitron (now Nielsen Audio), Strata View, SBMS, SQAD, Scarborough, MRI, and Media Audit.

To help determine which media vehicles are right for each media plan, the Contractor will thoroughly evaluate all options and provide recommendations based on a variety of factors, including: Overall media objectives, target audience definition, budget parameters, flighting considerations, CPP (cost-per-point), CPM (cost-per-thousand), GRP (gross rating point), market coverage, viewability, measurability, avails, reach and frequency goals, and seasonality. The Contractor will evaluate media vehicles for each and every Lottery flight.

Michigan Lottery directives will precede media plan development. The Contractor will solicit Michigan Lottery input to confirm media purchasing guidelines, desired point levels, and resulting reach and frequency estimates. The Contractor will submit all media plans and schedules to the Lottery Program Manager for signed approval before any time or space is ordered.

The Contractor's Media Director will directly supervise all media planning and analysis activities for this Contract.

D. Inform the Lottery of and evaluate as requested any special or unique media placements or opportunities.

The Contractor will proactively seek special placements and opportunities. The Contractor will require bonus spots, space, and merchandising opportunities for Lottery.

The Contractor will include strategically directed added value in every media plan.

The Contractor will provide Lottery with permanent, ongoing media exposure that extends dollars and messages all year long. The Contractor will create opportunities for giving away lottery tickets as part of prize packages, for obtaining merchandise for Players Club contests, for sponsoring "instant replays," etc.

The Contractor will provide complete and comprehensive media services from planning through placement and analysis to creation, development and evaluation of any and all special media opportunities in order to maximize every dollar spent.

E. Buy and negotiate radio and television air time, publication space, outdoor and transit space, and any other media used for advertising and promotions projects in accordance with the specific guidelines established by the Lottery for each medium. Guidelines include, but are not limited to, demographic parameters, rating point goals, viewability, programming restrictions, daypart goals, audience-delivery goals, and make-good procedures.

The Contractor will customize every media plan for every market. The Contractor will constantly monitor media changes and variations in each market. The Contractor will send guidelines to stations and will require the stations to sign off on them.

TV Buying Guidelines include: Target Audience, General Direction, Goals, Scheduling, Makegoods/Bonus Weight, Multi-spotting / Placements, Program Length, Maximum units, Programming Restrictions, Flighting, Rotations, Value-Added, Cancellation Policy, Missed Schedules, Dayparts, Post-Buy

Radio Buying Guidelines include: Target Audience, General Direction, Goals, Station Selection, Makegoods, Competitive Separation, Multi-spotting / Placements, Programming Restrictions, Flighting, Rotations, Value-Added, Cancellation Policy, Missed Schedules, Dayparts, Post-Buy

Digital Buying Guidelines include: Target Audience, Scheduling, Prohibited Content, Ad Placements, Media Vehicle Preference, Viewability Requirement, Additional Requirements, Delivery Guarantee

The Contractor will work in Lottery's best interest to secure media rates most favorable to Lottery and will commensurate with ethical practices and good quality.

The Contractor's media strategy will vary by product and promotion. The Contractor will procure no-charge added value for every buy placed on behalf of Lottery and will negotiate bonus media annually from all annual contract vendors.

The Contractor's Media Buying Director will directly supervise all media negotiating and buying activities for this Contract.

F. Monitor performance and make real-time adjustments to live campaigns as needed. Monitor all reporting systems to ensure campaigns are running correctly and impressions bought are delivered.

The Contractor's buyers will be in constant contact with all stations to monitor schedule delivery during each campaign. The Contractor will provide buying guidelines to stations which indicates that any purchased spots pre-empted/missed, must be made good in the same flight in the dayparts in which they were pre-empted/missed. If spots cannot be made good within the flight, credits for pre-empted/missed spots will be taken upon invoicing.

The Contractor will ensure that digital ads run in a brand safe environment.

The Contractor will use a digital ad-serving solution (DoubleClick Digital Marketing Campaign Manager) to monitor digital performance. See Section 1.5.C.

G. Conduct post-buy review on the placement of media and provide detail on the effectiveness of media buys in terms of cost, reach, frequency, continuity, and message dispersion requirements, etc., after every buy. The Contractor should use findings to refine current and future media plans. No later than two months following the end of each media buy, the Contractor must submit this post analysis report to the Lottery Program Manager.

All invoices from the media will be checked against orders and schedules for accuracy.

Broadcast schedules, following the guidelines, will be checked spot by spot to ensure that they ran as purchased and at the correct rate and with proper separation. If post-buy analysis indicates under-delivery by 10% or more, The Contractor's buyers will negotiate bonus weight to be made up by the stations on future or ongoing schedules.

The Contractor will check print insertions on a similar basis for proper date, space and rate.

The Contractor will measure online advertising by impressions delivered per guidelines. A credit will be issued to Lottery if the post-buy analysis indicates delivery under 100%.

The Contractor requires outdoor companies to provide posting sheets and digital photographs confirming the ads have been posted. Where necessary, the Contractor will ride to the locations to confirm placement. The Contractor will perform results analysis via media tracking systems and will coordinate with local market data to provide reports using the Contractor's systems.

The Contractor will use the following media service tools to facilitate planning, reporting, and accurate billing and post-buy analysis:

- STRATA View to build broadcast for rated markets. Nielsen and Arbitron ratings are updated into the View system
- SBMS to run all media reports, schedules, and billing, as well as to build non-rated market buys
- Ad Assist for management of print schedules, buys and billing
- AdVantage for traffic instructions and ISCI code logs
- DCM – DoubleClick Digital Marketing Campaign Manager for digital campaigns to confirm number of impressions delivered as well as viewability for annual programs

H. Cooperate and work in tandem with third-party media auditing services to periodically examine and audit advertising released through the various media to verify that quality, timing, position, and distribution are consistent with the approved plans, guidelines, and industry standards. If, for any reason, the auditing service finds these conditions are not met, it is the Contractor's responsibility to rectify the situation.

1.3 Creative

A. Responsible for the conceptual development of multi-media promotional programs as identified in the annual marketing plan. At least three creative alternatives shall be presented for consideration unless otherwise directed by the Lottery. Generally, one of the three concepts is taken to final art or script, which is generally routed for review and comment through necessary Lottery staff. Once changes are made and reviewed, the concept will receive final approval from Lottery to move forward.

The Contractor will utilize a listen, think, do approach.

The Contractor's conceptual development process will begin with a creative strategy that provides direction and lays the groundwork for all materials to be developed and ultimately produced. This strategy details:

1. Background information about the project including industry and consumer insights available from primary and secondary research efforts
2. The key message to be communicated or problem to be addressed
3. How the marketing, advertising, and/or promotion proposes to accomplish or solve it
4. The target audience(s) to be reached
5. The appropriate tone and manner
6. And any other supporting information/reasons to believe needed to motivate a desired consumer response

A work order submitted with the creative strategy will become the basis for project scheduling and deadlines. The Contractor will establish internal dates to allow sufficient time for Lottery Program Manager approval and will assure that scheduled delivery dates are met. The Contractor's creative department will be responsible for developing all materials from concept through production in a timely manner.

Once the strategy and work order are finalized, the process will continue with a creative "Workstart" session during which Contractor creative teams will be briefed on the strategy by the Contractor's account and strategic planning teams. These teams will review all project details, get everyone on the same page, and get everyone inspired by and excited for the new task at hand.

The Contractor's creative groups will be directly supervised by the Contractor's Executive Creative Director and will be staffed by art directors, copywriters, desktop finishers, print producers, and broadcast producers. The Contractor's integrated teams will approach each assignment from all perspectives and disciplines and collaborate to accomplish the objectives. The Contractor's account teams will provide judgment on marketing matters, and the Contractor's creative teams will provide judgment on approach, technique, and production matters.

Following the Workstart session, the Contractor will search for effective executions that will stimulate purchase behavior and meet outlined objectives. The Contractor will challenge, revise and hone ideas. The Contractor's process of preparing creative concepts typically involves the following:

1. Soak up information, examine the facts, start to imagine
2. Brainstorm to encourage a free flow of ideas
3. Refine ideas in art director / copywriter teams
4. Present to each other internally for input and suggestions
5. Consider and evaluate alternative approaches
6. Further develop the best lines of thinking
7. Refine executions and explore with account and media team members
8. Select a minimum of three alternative concepts to present for Lottery Program Manager approval

The Contractor's account team and creative team will jointly present at least three (3) alternative campaign concepts that are on strategy and able to be produced for the budget. The creative concepts will take into account overall project objectives, target audiences, key messages to be communicated, tonality and budget considerations. Using these additional measures of creativity as a guide, the Contractor will work together with Lottery to determine which of the campaign concepts should be developed further.

The Contractor's creative process will remain nimble and responsive at all times. In the event that additional creative exploration is needed or changes to the presented concepts are requested, the Contractor's account and creative teams will work to refine the concepts as necessary to accommodate Lottery direction and input at every stage.

After determining the agreed-upon direction, the Contractor's creative teams will finalize all scripts, layouts and other creative materials to be produced. The Contractor will develop and submit written production estimates for Lottery approval before any production takes place.

B. Create and direct the development of comprehensive advertising materials to support approved promotional programs. Materials include, but are not limited to, television, radio, point-of-sale, out-of-home, digital, advertising specialties, printed brochures and other collateral materials.

The Contractor's creative brief will outline the parameters of the project and the pieces to be created.

Key components of the brief:

- What do we want to advertise or promote?

- Why do we want to advertise or promote this?
- Who specifically are you advertising or promoting the brand (product) to with this program
- What do you want to communicate?
- What consumer change do we expect (think, feel, act)?
- What are the quantified objectives?
- Other details to be followed (e.g. timing, mandatory elements, etc.)

The Contractor’s strategic and account teams will answer each of those questions separately and carefully.

The Contractor will assign the creative teams based on the nature of the work to be produced. The Contractor will have the depth of resources to assign multiple writer/art director teams as needed, supported by print and broadcast production personnel, to implement the finished product. With oversight by an experienced account service team, the Contractor will be able to manage multiple projects at all times and on all fronts.

Once creative concepts have been approved, the Contractor’s writers and art directors will then be responsible for creative development of all elements of the promotional program including: TV scripts and storyboards, radio scripts, POS comps, outdoor layouts, out-of-home marketing venue layouts and storyboards, print layouts, digital layouts and storyboards, and any other elements that arise from the conceptual ideas such as social media or other collateral opportunities.

In addition, the Contractor will develop comprehensive integrated campaigns for most larger-scale promotions. TV, radio, POS, out-of-home and digital materials typically follow the same strategy and often the same creative execution.

For this instance, the creative brief will outline that an overarching, umbrella campaign, supported by all promotional materials, is required. Following the creative concept development process noted in response to Section 1.3.A the Contractor will present at least three (3) different overall campaign ideas, showing how the campaign will work across multiple channels and multiple elements. For concepts 1-3, the Contractor will typically present the “big idea” and then show it works in TV, radio, POS and digital. Once the Lottery Program Manager approves the overall creative concept direction, the Contractor will extend the idea to all campaign elements.

Contractor’s development and integration process for Michigan Lottery game launches, repositioning campaigns, and sales promotions:

1. The Contractor’s creative and account teams will present integrated campaign ideas to Lottery
2. Approved TV concepts will typically be woven into radio as well (same music, characters, scenarios).
 - e.g. – creative and broadcast teams work together to bring the concept to life in all broadcast media elements
3. Comprehensive POS kits will be produced to accommodate a wide variety of elements (small space to larger space, die cut and flat, 1/sided vs 2/sided, flyers and brochures) so a point-of-sale kit involves the creation and direction of multiple advertising elements.
 - Note: POS production lead time requires that it come early in the creative development process.
 - This design will also adapted for any and all specialty advertising premium and collateral items.
 - The Contractor’s creative and print production teams will work closely to bring the concept to life in all POS and collateral elements
4. The design from the POS kit will be translated to the out-of-home, print and digital display elements for a truly integrated campaign. The Contractor’s creative and account teams will work closely together to help transition the look from one piece to the next in the way that is most effective for that particular element

CREATIVE CONCEPT & DEVELOPMENT PROCESS		
JOB ACTION	DESCRIPTION	TEAM

Lottery Project Workstart	Overall assignment given, including: <ul style="list-style-type: none"> - Objectives - Budgets - Timing - Possible tactics - Background - Other strategic considerations 	Lottery/Contractor
Generate Work Order Request	Assign project # with all details for project tracking, production and billing	Contractor Account Services
Draft Creative Brief	Gather additional insights from strategic planning and account services teams as needed to prepare thoughtful, comprehensive, actionable brief	Contractor Account Services and Strategic Planning
Client Brief Approval	Send creative brief to client for review	Contractor Account Services Lottery Program Manager
Creative Workstart	Collaborative meeting to present and discuss brief in detail and all project details. Increase excitement for task at hand	Contractor Account Services, Creative, and Production
Creative Ideation	Creative teams are developed; Prelim exploration of ideas and brainstorm; Internal review sessions	Contractor Creative
Creative Development	1. Evaluation of ideas 2. Refine 3. Additional focus of exploration at perform best 4. Develop campaigns with multi-channel executions	Contractor Creative
Creative Review	Meet internally to review ideas; Support strategic direction; Prepare for client presentation	Contractor Account Services, Creative, and Production
Creative Presentation	Present to Lottery three (3) concepts minimum	Lottery /Contractor
Client Input	Refine ideas and narrow down concepts	Lottery /Contractor
Creative Revisions	Based on Lottery direction - resubmit for approval	Contractor Creative
Creative Approval	Upon Lottery Program Manager approval, proceed with complete campaign rollout and additional creative deliverables	Lottery Program Manager/Contractor
Campaign Execution	Mid-process meetings with Lottery to review cross-channel materials; Proceed with production based on timelines established for each channel	Lottery/Contractor
Campaign Integration	Creative and production teams work together to support concept integration into all materials accordingly	Contractor Creative and Production
Campaign Deliverables	Production teams follow pre-pro, production and post production procedures to ensure timely delivery	Contractor Production

Campaign Completion	1. Ship materials 2. Traffic all materials 3. Confirm delivery	Contractor Production and Traffic
Campaign Evaluation	Review: - Sales - Budgets - Effectiveness of marketing materials - Media post-buy analyses - Future tracking/effectiveness research studies	Lottery/Contractor

1.4 Production

A. Responsible for the timeliness and quality of production of all marketing, advertising and promotion materials including, but not limited to, point-of-sale materials, collateral, brochures, advertising specialty items and direct mail.

Projects including but not limited to point-of-sale materials, collateral, brochures, advertising specialty items and direct mail, will be directly supervised by the Contractor's Vice President / Director of Print Production. The Contractor will manage the production of all such materials for this Contract. The Contractor will use the process below to ensure the timeliness and quality of all production:

1. **Competitive Bids:** As specific jobs are opened for each element in all marketing, advertising and promotion projects listed above, the Contractor will procure at least three written estimates from vendors once the Lottery Program Manager has approved layouts.
2. **Estimates:** The Contractor will prepare detailed estimates for Lottery Program Manager approval. The Contractor will present this information to Lottery with all back-up as needed for comparison and billing purposes.
3. **Bid Award:** Upon Lottery Program Manager sign-off of the estimate, the Contractor will award the bid on the basis of best overall value to the Lottery including best price and most qualified vendor to complete the project in the time specified.
4. **Timeline:** Once the project has been awarded, the Contractor will coordinate with all vendors to finalize the production schedule and provide the Lottery Program Manager with key review, approval and production dates.
5. **Purchase Order:** Contractor production will issue Purchase Orders to all vendors confirming all details of the project including cost, spec and delivery information.
6. **Final Files:** Prior to the release of any files for production, the Contractor will proofread one final time to ensure accuracy, and the Contractor's finishing department will review files to ensure that all specs meet the approved estimate.
7. **Oversight:**
 - a. The Contractor will work with vendors to coordinate all phases of production, including pre-production, press checks, proof approval and post production. The Contractor is able to manage all large-scale, multi-vendor production jobs.
 - b. The Contractor will coordinate all of the individual parts, and will package everything together into one cohesive program as needed for all multi-vendor production jobs.
8. **Client Approvals:** During the print production process, the Contractor will obtain Lottery Program Manager approval for all estimates, printing specs, artwork (e.g., illustrations and photography), and proofs. The Contractor will invite the Lottery Program Manager to attend press checks and photo shoots where participation may include providing "product" expertise and making on-the-set or on-the-spot Lottery Program Manager decisions.

9. Delivery: The Contractor will notify the Lottery Program Manager via email within 3-5 business days of project delivery. The Contractor will provide overruns to Lottery at no charge if applicable. The Contractor will provide pre-production samples and production samples to Lottery as requested.

B. Responsible for arranging the packing and shipping of printed materials to individual Lottery retailers or Lottery warehouses as required.

The Contractor will schedule and manage all printing, finishing and fulfillment to ensure that materials will be delivered to the regional offices three to four weeks ahead of scheduled promotion start dates to provide Lottery's district sales force time needed to distribute the materials and prepare the retailers for upcoming events.

The Contractor will prepare production schedules, budgets, estimates, spec/checklists and purchase orders to ensure all POS development and distribution stays on schedule and on budget at all times.

The Contractor will work with Lottery staff to coordinate distribution schedules outlining quantities to be distributed by warehouse, by region, and/or by specific retail location. The Contractor will then work very closely with all production and fulfillment vendors to ensure materials are packed and delivered as specified.

At least 3-5 days prior to delivery of all print materials, the Contractor will notify the Lottery Program Manager and confirm delivery details such as pallets, skids, carton quantities, etc.

The Contractor will visit retail locations to evaluate how materials look in the retail environment and will work with Lottery to consistently develop new and more effective methods of delivery as well as the development of new materials to optimize the changing demands of the retail environment.

C. Direct and coordinate television and radio production and review all aspects including budgets, casting, music, and special effects with the Lottery. Responsible for film shooting, recording, editing, and post-production. Deliver both rough cuts and finished spots to the Lottery for final approval with sufficient time allowed for necessary changes, if required.

The Contractor's Vice President / Director of Broadcast Production will directly supervise broadcast production. The Contractor's broadcast production team will manage the process of turning creative ideas into finished products.

The Contractor will adhere to and be responsible for all activities identified in the process below:

Pre-Production:

1. Approved scripts and storyboards
2. Triple Bid Process
3. Estimate /Lottery Program Manager approval
4. Bid Award
5. Secure vendors / Purchase Orders issued
6. Production schedule

As specific jobs are opened for each element in proposed television and radio production projects, the Contractor will procure at least three written estimates from vendors.

Upon Lottery Program Manager sign-off, the Contractor will award the bid on the basis of best price and most qualified vendor to complete the project. The Contractor's production team and talent coordinator will be responsible for talent from initial development of casting specs through casting sessions, through booking of talent, through negotiating contracts and final talent payments. The Contractor will coordinate and supervise all pre-production meetings with all parties to keep everything on track strategically, creatively and timely prior to production.

The Contractor will provide a complete, detailed production schedule that outlines all phases with the timing necessary to ensure appropriate finishing and delivery, allow for Lottery Program Manager approvals at every stage and meet air dates:

Production:

1. Shooting boards / final scripts
2. Pre-pro meetings

3. Lottery Program Manager approval
4. Casting
5. Location
6. Pre-pro book
7. Shoot (TV) / Recording Session (Radio)

The Contractor's production team will be responsible for coordinating the efforts of all parties involved in the production process to bring scripts and storyboards to life in a way that will help maximize production values and lead to greater awareness of and sales for Michigan Lottery products.

The Contractor's production, creative and account teams will be on set for TV production and in studio for radio production to ensure objectives and schedules are being met.

The Contractor's production team will issue purchase orders to all awarded vendors confirming all related costs.

Post Production:

1. Offline edit
2. Lottery Program Manager approval
3. Online edit
4. Audio / Music Production
5. Prepare all versions
6. Final Lottery Program Manager approval
7. Electronic files of all slated spots created, uploaded and stored including music, special effects, recording sessions, editing, dubs, and shipping.

The Contractor's production team will monitor timelines and schedules to make sure work is completed on time and on budget.

The Contractor's in-house editing system can be used to provide cost-effective, off-line editing prior to on-line editing. In addition to off-line editing, the Contractor's in-house production facilities will allow the Contractor to transmit to the Lottery computer-generated imagery (CGI) and transmit video and audio work in progress and make changes as needed.

Lottery is encouraged to attend pre-production meetings, shoots, and both off-line and on-line editing sessions.

The Contractor will present materials the Lottery Program Manager for input, review and approval at several stages of the development and production process, with sufficient time allowed for necessary changes.

Final Lottery Program Manager approval will be required on all television and radio spots before they are trafficked. Final audio and video files will be posted to the Contractor's web-based asset management system (see also Section 1.5).

1.5 Traffic

- A. Utilize and maintain a secure Internet-based asset management solution to view and transfer files between the Contractor, the Lottery, and other Lottery vendors. The solution should also facilitate automation of the Contractor review process to route approvals, review and mark up production materials, and ensure that Lottery sign-offs are properly obtained and audit trails are logged to meet Contract compliance. Asset management services are the sole expense of the Contractor.**

The Contractor's Internet-based asset management solution will be secure, password-protected, and collaborative. The Contractor will always have immediate access to the latest project documents including: layouts, estimates, status reports, artwork, internal and Lottery comments, etc.

The Contractor's administrator will determine which workspaces each person can access. Access can be restricted further by project, folder or document, so that each person only sees information appropriate to his/her role.

- B. Ship all approved advertising materials, with appropriate traffic instructions, to media vendors in time to meet program deadlines. Send the Lottery a weekly checklist summarizing all media traffic instructions.**

The Contractor's traffic department will print a weekly traffic report of all materials in progress, staff members responsible for each job, and due dates. During the course of the production process, the Contractor's traffic

coordinator will obtain materials from the Contractor's creative department as they are due and route them to all members of the Contractor's account team.

When production is complete, the Contractor's traffic coordinator is then responsible for proper packaging and shipping, providing accurate and timely delivery of all advertising materials, and providing instructions in their use, to all media on the advertising schedule. The Contractor will update traffic instructions regularly.

Broadcast Traffic

For each radio and TV buy, the Contractor sends out specific instructions to all markets/stations with the following information and instructions including:

1. Station Name/Market
2. Flight Dates
3. Client Name
4. Promotion/Product
5. Estimate Number
6. Contact Information (in case the station has any questions)
7. Slate Number (ISCI code)/Name
8. Rotation (rotation of the spot)
9. Delivery Instructions (informs the station how the spot(s) are arriving and when the spot(s) are arriving)
10. Enclosure (any additional notes the station/market needs to know)
11. Signature line asking the station/market to sign and email confirmation that they have received these instructions

The Contractor's traffic team will work directly with producers, Contractor's account team and media buyers to make sure that all necessary materials are ordered, shipped, and delivered correctly and on time.

Once finished spots are approved by the Lottery Program Manager and ordered by the Contractor's account team or broadcast producer, the Contractor's account coordinator will assign a slate number (ISCI code) to the spot and files a final produced version on the Contractor's server and web-based asset management system.

For electronic trafficking of TV broadcast materials the Contractor will use Extreme Reach. This platform will provide satellite capabilities for reliability, speed and efficiency. In addition, it has quality controls built in to further monitor and ensure that spots are properly formatted (HD vs SD e.g.) for each and every station. The Contractor's traffic team will issue purchase orders to Extreme Reach, based on approved cost estimates, covering the costs for commercial distribution to all stations.

For radio, the Contractor will traffic all spots electronically directly to the stations.

The Contractor typically will send finished spots to stations one week prior to air date to allow sufficient time for final preparation by the stations.

Print Traffic

Once an ad is approved by the Lottery Program Manager, it will be routed one more time for proofing. Once it has been proofed, it will be given to a Contractor desktop designer for finishing. The Contractor's desktop designer will format the ad to the size (live/trim/bleed) and color (4/C, 1/C, B/W) specified. The Contractor's traffic team will save a Hi Res PDF in the Lottery Print file for release to publications. As is done for broadcast, specific print traffic instructions will be created. The instructions list the following:

1. Publication
2. Insertion Date(s)
3. Client
4. Promotion/Product
5. Publication Contact
6. Agency Contact Information
7. Print Ad Name/Job Number
8. Size and Color
9. Ad Placement
10. Enclosure – further confirms with publication exactly what they are receiving
11. Signature request for publication to sign and email back acknowledging that they have received the ad and instructions

The Contractor prepares and sends final files well in advance of insertion dates to accommodate publication lead times.

Outdoor Traffic

The Contractor proofs the outdoor layout one more time following Lottery Program Manager approval. Once proofed, the Contractor's desktop designer will prepare the outdoor to specified size(s) and formats. The Contractor will set up files individually for each outdoor company on the buy to ensure appropriate finishing and production. This applies to both static and digital bulletins. The Contractor will send the final files. The Contractor's traffic team and will save them in the Lottery Outdoor file for release to outdoor companies. The Contractor's traffic team will send the final outdoor layouts with instructions to the outdoor companies. The outdoor instructions will be the same as the print instructions with the following exceptions:

1. Instructions are labeled Outdoor traffic
2. Instead of ad placement, it is location of the billboard
3. Instead of insertion date it is flight date(s)

The Contractor prepares and sends final files for static bulletins well in advance of insertion dates to accommodate outdoor production and posting. Art files for digital bulletins can be sent 2-3 days prior.

If the outdoor companies are producing the vinyls to be posted, then proofs will be sent to the Contractor for approval. Upon Lottery Program Manager and Contractor approval of the proofs, the Contractor will authorize final production. The Contractor's traffic team will issue purchase orders to the outdoor companies, based on approved cost estimates, covering any costs for production of vinyls or extensions.

Internet Traffic

For digital display and mobile, the Contractor proofs the ads one more time, and the Flash/html5 developer will also review the files a final time to make sure the animations and all elements/specs are correct. After this is done, all of the files (gif, swf, jpg, fonts, etc.) with the click thru link will be sent to the Contractor's traffic team and saved in the Lottery Internet files for release via the web-based ad-serving solution to Web publishers. The Contractor prepares electronic instructions when ads are uploaded via the web-based ad-serving solution. Ad tags will be assigned to each web publisher and will include client name, ad/promotion name, ad size, ad channel (desktop, mobile, tablet) and stop/start dates. Once ads are uploaded to the server, they will go through a quick Quality Assurance (QA) test by the publisher to make sure all specs are correct and files are running properly before being activated.

The web-based ad-serving solutions costs are based on number of impressions served. Media estimates provided by the Contractor to Lottery will include these costs for each media buy and require approval prior to digital uploads.

The Contractor will upload files in advance to allow time for the quality assurance check by the publisher, but can then be activated immediately.

The Contractor will provide a weekly checklist summarizing all traffic instructions noted above to Lottery as needed by medium, by flight date, by promotion, etc.

C. Utilize and maintain a real-time digital ad serving solution that will allow the Contractor to manage digital placements and track ad performance including: impressions, clicks, conversions, ad spending, viewability, etc.

The Contractor will use DoubleClick Digital Marketing Campaign Manager (DCM and also known as DFA – DoubleClick for Advertisers. See also Section 1.5.B) to create, manage and grow high-impact digital marketing campaigns including ad serving, data-driven insights and streamlined operations.

This system allows the Contractor to:

1. Centralize and streamline digital campaign implementation and campaign management
2. Create/manage multiple campaigns across all media buys
3. Obtain standardized reports across all initiatives/sites
4. On-the-fly campaign optimization

The system has a creative library repository for all current and old creative used previously

1. Can be added here and imported into a campaign, or vice versa: any creative added to a campaign, will be stored here automatically
2. Allows for easy re-use and updates for a creative asset
3. Create floodlight tags to track conversions.

The system provides an additional source of data analysis to compare to under-supplied reporting, leading to more accurate monitoring and measurement.

1.6 Market Research

Direct and coordinate research studies (qualitative and quantitative) and assist the Lottery in determining marketing and sales opportunities and evaluating strategy, promotional effectiveness, and sales performance (also see Section 1.1)

Contractor research will include but is not limited to secondary research, consumer feedback gathered through primary studies focus groups, perception analyzers, telephone surveys, web-based studies, tracking studies, statistical analysis, and advertising impact studies.

Research subjects/focus will include but are not limited to:

1. Positioning strategies
2. Consumer awareness, attitudes, and usage tracking studies
3. New product concepts
4. Sales analysis
5. Relative appeal of alternative creative approaches and messages
6. Consumer-focused to help determine player attitudes, perceptions and preferences.
7. Game-focused to help determine the best games to bring to market – evaluate and then optimize game designs, play styles, price points, prize structures and even game names.
8. Results/ROI focused, helping to confirm the value of advertising and marketing programs, campaign impact and effectiveness, media mix, promotions/offers and their return on investment.

The Contractor's Director of Consumer Strategy and Insights will:

1. Work with Lottery to determine information needs, agree on desired methodology, develop the survey instrument, and discuss findings.
2. Ensure that all research findings are utilized in a manner that aids both the creative and media selection process, where appropriate.
3. Directly supervise all research efforts for this Contract.

The Contractor's Director of Consumer Insights will be responsible for coordinating all primary research projects undertaken, including preparing requests for proposals and securing three competitive proposals for all major research studies to be undertaken.

1.7 Transition

As a one-time project upon award, the Contractor must review existing campaigns and performance reports in order to provide recommendations to maximize value from the existing media mix.

The Contractor will review all campaigns and performance reports and provide recommendations to maximize value to Lottery. The Contractor will treat every new campaign undertaken as an opportunity to learn. The Contractor will listen to the Lottery Marketing team, field reps, players, retailers, the media, and sales reports, then think about ways to make campaigns even more effective and further maximize revenues for Lottery. The Contractor will review quarterly performance reports received from Lottery for further insights on ways in which to maximize value. The Contractor's President, Account Director, Media Director, and Executive Creative Director are responsible for these transition services. The Contractor commits to continuous improvement and will always look for new ideas, and new, better, and more efficient ways to market those ideas.

2. Acceptance

Before approving invoices for payment, the Lottery will review deliverables and review invoices to verify costs are accurate. Contractor's invoices must include detailed information for the project. The Lottery will pay the Contractor for its costs incurred related to the Deliverables plus mark-up based on the Contract rates. The Lottery will reimburse the Contractor only for services and/or merchandise authorized by Lottery, approved by the Program Manager, and provided for in the purchase order. Payment will not exceed the amount approved by authorized estimate without submission and approval of a revised estimate. All invoices must reflect actual work done. Invoice and payment specificity will be agreed upon between the Lottery and the Contractor per Section 6.1.

3. Staffing

3.1 Contractor Representatives

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

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

Contractor Representative:

Jamie Michelson
 (248) 269-4345
 jamiemichelson@smz.com

3.2 Work Hours

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

3.3 Key Personnel

A. Key personnel are directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel are specifically assigned to the State account, must be knowledgeable on the contractual requirements, and must respond to State inquires within 24 hours.

Key Personnel Name	Title	Role(s) and Responsibilities assigned for this Contract	Direct / Subcontractor / Contract Employee	Full-Time (FT)Part-Time (PT) or Temporary (T) Employee	% of Work Time Devoted to Lottery versus total overall workload	Physical Location during Contract Performance (City, State)
James A. Michelson	Chairman	Overall agency management responsibility. Provide counsel to Lottery and agency account team.	Direct	FT	75%	Troy, MI
Jamie Michelson	President & CEO	Oversee entire contract. Overall agency and account management responsibility	Direct	FT	25%	Troy, MI
Pam Renusch	EVP/ Account Director	Overall management responsibility on account; provide strategic development oversight; manage budgets; coordinate efforts of all departments on behalf of Michigan Lottery	Direct	FT	75%	Troy, MI
Sue LaRue	Director of Consumer Insights and Strategy	Direct, manage and lead all research and strategic planning efforts	Direct	PT	20%	Troy, MI
John Gielow	VP/ Account Supervisor	Oversee planning, direction and implementation of all projects; supervises account team assigned to handle day-to-day activities	Direct	FT	100%	Troy, MI

Ashley Rooney	Account Executive	Manage all day-to-day activity on account; manage all workflow to ensure deadlines and budgets are met; coordinate all media, creative and production activities	Direct	FT	100%	Troy, MI
Aleena Bobich	Assistant Account Executive	Assist day-to-day account lead; help coordinate all media, creative and production development and execution	Direct	FT	25%	Troy, MI
Michael Corbeille	EVP/ Executive Creative Director	Lead all brand initiatives; work with creative team to plan, develop and produce all creative materials; present work to client; work with all department heads to integrate creative materials	Direct	FT	30%	Troy, MI
Eric Head	Creative Director	Oversee creative teams; Create, write and produce compelling and engaging content on time, on budget and on strategy	Direct	FT	50%	Troy, MI
Joel Bienenfeld	VP/Director of Broadcast Prod/Assoc. CD	Plan and execute all broadcast, digital video and alternative media production; manage bid process; prepare estimates; and coordinate with broadcast vendors	Direct	FT	50%	Troy, MI
Kathleen Finley	Senior VP/Director of Print Production	Plan and execute all print, POS, collateral, and direct mail production, finishing and fulfillment; manage bid process; prepare estimates; and coordinate with print vendors	Direct	FT	50%	Troy, MI
Ken Langridge	Senior Copywriter	Create, write and produce compelling and engaging content on time, on budget and on strategy	Direct	FT	50%	Marshall, MI
Jeff Martin	Senior Art Director	Create, design and produce compelling and engaging content on time, on budget and on strategy	Direct	FT	50%	Troy, MI
Amy Klein	Media Director	Responsible for research, media mix selection, budget allocation, tactical execution for all offline and online media channels; metric reporting and	Direct	FT	25%	Troy, MI

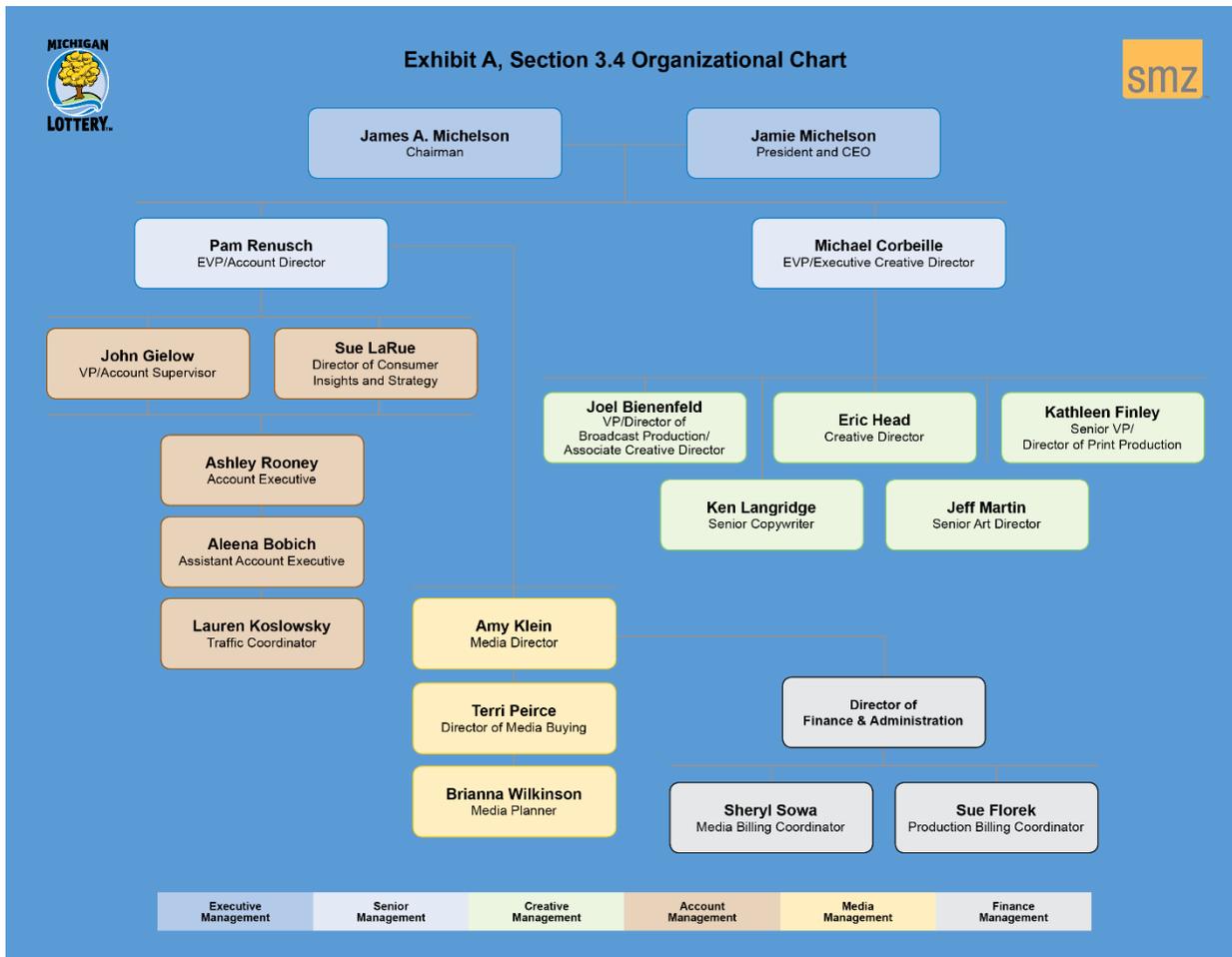
		preparation of post buy analyses				
Terri Peirce	Director of Media Buying	Supervise all buying activity for all media; ensure all goals are met according to overall plan; work with media partners to create unique promotional and added value opportunities; secure all makegood and under delivery weights as needed	Direct	FT	50%	Troy, MI
Brianna Wilkinson	Media Planner	Supervise planning activity for all MI markets; ensure all goals are met according to overall plan; work with media partners to create unique promotional and added value opportunities; secure all makegood and under delivery weights as needed	Direct	FT	50%	Troy, MI
Lauren Koslosky	Traffic Coordinator	Oversee all traffic and duplication efforts; manage digital uploads via DFA ad server; route all materials internally for review and approval	Direct	FT	50%	Troy, MI
Sheryl Sowa	Media Billing Coordinator	Responsible for coordinating and generating media billing	Direct	FT	50%	Troy, MI
Sue Florek	Production Billing Coordinator	Responsible for coordinating and generating production billing	Direct	FT	50%	Troy, MI



The Contractor's Key Personnel will consist of Contractor's most senior and experienced staff, covering all disciplines necessary to satisfy the Lottery's needs.

The Contractor's Key Personnel will provide input and contribute to strategic planning efforts on behalf of the Lottery. The Contractor's Key Personnel will establish priorities and schedules, review projects, and ensure that all work proceeds in a timely and satisfactory manner. When work involves the efforts of subcontractors and/or other outside resources, the Contractor's Key Personnel will coordinate these efforts.

3.4. Organizational Chart



3.5. Disclosure of Subcontractors

- A. Situations may arise where the Contractor may not possess the expertise necessary to effectively execute a project. The Lottery expects that in those instances the Contractor will propose, or the Contractor and the Lottery will jointly identify, subcontractors as needed to creatively develop and oversee production of certain special programs or projects.

3.6 Security

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. Furthermore, Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

4. Project Management/Project Plan

4.1 Project Management



1. **The Contractor must provide account management** that is proactive and flexible to meet changing business conditions.

The Contractor's Account service team members will be in daily contact with Lottery.

This Contract will be directly managed by the Contractor's chairman, and will receive the hands-on time and attention of the Contractor's most senior and experienced account service, creative, media, and production staff. The Contractor will ensure that the Lottery gets the best effort and the best output from every resource of the Contractor.

The Contractor is responsible for follow-up and execution of all projects. The Contractor's Account executives will prepare status reports, progress reports and conference reports on a routine and timely basis. They will oversee work in progress and ensure that deadlines are met. They will also be responsible for securing Lottery Program Manager review and approval of every order and every job, before any project or work order is implemented.

All members of the Contractor's team will be fully accessible to the Lottery at all times. All Contractor resources will be available to the Lottery on a priority basis.

The Contractor will provide quick turnaround and demonstrate a sense of urgency. The Contractor will provide careful planning, attention to detail and sound execution.

The Contractor ensures that there will always be adequate and proper staffing for the Contract. Should the scope of work require it, the Contractor will immediately add any staff and resources necessary to meet the needs and expectations of Lottery.

2. **The Contractor must take all reasonable precautions to guard against any loss to Lottery through the failure of suppliers to execute commitments properly.**

The Contractor will be in constant contact with the suppliers to ensure that all jobs are done on time and on budget. The Contractor's print production team will oversee all suppliers involved in the print production process: printing, finishing, fulfillment, ad specialty, direct mail, lettershop e.g. The Contractor's broadcast production team will oversee all suppliers involved in the broadcast production process: edit studios, directors, production companies, talent agents, audio engineers, music houses and licensors. The Contractor's media team will maintain relationships with representatives in every medium in every market across Michigan. The Contractor's media team will meet with media representatives daily to learn about new opportunities that will benefit Lottery and will negotiate every day to get the best rates for Lottery. The Contractor's creative team will work with outside suppliers as needed such as— illustrators, photographers, animators e.g. to help bring creative materials to life. The Contractor sends every supplier a work order such as a production purchase order or a media insertion order that further specifies: the work to be done, the media to be placed, the quantities to be ordered, the timeframe to be met, and the total cost not to be exceeded. The Contractor starts all marketing projects as early as possible to leave as much time as possible for all execution and implementation, including sufficient time for changes, revisions, and unexpected occurrences. The Contractor will work diligently, timely and proactively to ensure that all suppliers are able to execute their commitments properly.

3. **The Contractor shall not begin any work on any project before the Lottery Program Manager has given formal approval and a work/expense authorization/purchase order has been issued and signed.**

The Contractor will prepare estimates for every project large and small, broadcast production, print production and media (also see Section 1.3 and 1.4). The Contractor will obtain Lottery Program Manager approval on estimates before any work can begin. Once the Contractor receives signed estimates, purchase orders and/or insertion orders are then issued indicating approval to proceed with the order. Estimates can be transmitted electronically via the Contractor's web-based asset management system. The Contractor will adhere to strict internal quality controls: purchase orders cannot be authorized by appropriate personnel without a signed estimate from the Lottery Program Manager and purchase orders are not valid to an outside supplier without signature by an authorized Contractor signature.

4. **Upon failure to meet a predetermined deadline, the Contractor must provide an explanation for such failure as soon as it is known and submit an updated project schedule to the Lottery.**

The Contractor's Account Director is the key individual responsible for receiving input and direction for any issues or changes that develop. The Contractor's Account Director will pull together the members of the brand team, assess the situation and provide the Lottery Program Manager with a full explanation for what happened and an updated project schedule. The Contractor's account team will be intimately involved with appropriate Lottery personnel and external partners throughout the process to make sure that the team is aware of any issues/changes as they arise. The Contractor will utilize their depth of resources and coverage plans to make sure Contractor team members are available to respond to issues at all times. The Contractor will remain responsive and flexible at all times. In the event a deadline is missed e.g., to the Contractor will take immediate, thoughtful action to bring about swift and effective resolutions.



Contractor Project Management Practices and Process:

The Contractor will work in partnership with Lottery, collaborating on all projects.

1. Initiating
 - a. Client and Lottery input meeting
 - b. Define goals and objectives
 - c. Establish budgets and due dates
2. Planning
 - a. Marketing and Strategic Planning
 - 1) Secondary research analysis and review
 - 2) Primary Research
 - 3) Idea generation for new promotions / game enhancements
 - b. Media Planning
 - 1) Media Analysis, review and recommendations
 - 2) Media Plans / estimates prepared and submitted to Lottery Program Manager for approval
3. Creative Exploration
 - a. Creative briefs submitted to Lottery Program Manager for approval
 - b. Creative Workstart
 - c. Creative exploration
 - d. Develop concepts
 - e. Lottery Program Manager review sessions
 - f. Lottery Program Manage approval
4. Executing
 - a. Estimates issued
 - b. Insertion orders issued
 - c. Purchase orders issues
 - d. Production schedules updated
 - e. Media insertion orders issued
5. Monitoring
 - a. Lottery Program Manager approval at all stages
 - b. Review meetings
 - c. Status reports issued
 - d. Conference reports issued
 - e. Utilize web0based project management and reporting tools to maximize work flow efficiency
 - f. Media optimization ongoing
6. Reporting
 - a. Media post-buy analysis
 - b. Provide detailed invoices
 - c. Prepare and submit complete back-up
 - d. Provide invoice reconciliation
 - e. Make timely payments to vendors and subcontractors

4.2 Project Plan

1. **The Contractor must meet with the Lottery for direction and to discuss the specifics of each project to be undertaken.**
2. **The Contractor shall not begin any work on any project before the Lottery has given formal approval and a work/expense authorization/purchase order has been issued and signed.**
3. **The Contractor must develop a critical path development schedule providing sufficient Lottery approval time frames from initial presentation of creative through the production and delivery of product.**

The Lottery Program Manager must approve the Project Plan before work may begin.

4.3 Meetings

The Contractor must attend the following meetings:

- A. **In-person Kick-Off Meeting within 14 calendar days of the Effective Contract Date.**



- B. Although there will be continuous liaison with the Contractor team, the Contractor must confer monthly at a minimum, with the Lottery Program Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.
- C. The Contractor must confer with Lottery upon request within 2 business days of contact to initiate services, requests, review materials, review progress, discuss problems, obtain advice and counsel, etc.
- D. The State may request other meetings, as it deems appropriate. The Contractor must meet in-person/on-site when deemed necessary by the Lottery Program Manager. The Contractor must conduct meetings with subcontractors independently as directed by the Lottery Program Manager.
- E. The Contractor will require attendance by all Key Personnel at Lottery meetings including members of the account service team, media team or creative team as needed, based on the scope of the project.

4.4 Reporting

The Contractor must submit to the Lottery Program Manager, the following written reports:

- A. The Contractor must provide conference reports within three working days of all meetings and/or conference calls as requested by the Lottery.

The Contractor will issue the report to any additional Lottery team members as requested by the Lottery Program Manager. The Contractor's account service team is responsible for issuing the report and following up with all other team members (media, creative, production, traffic, and accounting) to make sure the necessary action steps as outlined are being taken to keep all projects on time and ensure delivery of all materials without incident. Conference reports will be posted to the Contractor's web-based asset management system for easy access, follow-up, and back-up.

- B. The Contractor must provide periodic weekly status report/presentations as requested by the Lottery.

Status reports will be updated and issued by members of the Contractor's account service team. These reports will list Contractor and Lottery personnel assigned to each specific project.

- C. No later than two months following the end of each media buy, the Contractor must prepare post-buy analyses which compares media planned versus media delivered and audience planned versus audience delivered.

The Contractor's additional measures and deliverables include:

1. Weekly Contractor Internal Traffic Reporting
2. Digital Media Reporting
3. Print Production Reporting
4. Broadcast Production Reporting
5. Quarterly Media Broadcast Expenditure Reporting

5. Ordering/Authorizing Document

The appropriate authorizing documents for the Contract will be a signed Blanket Purchase Order as well as an Agency Issued Purchase Order and Project Plan.

6. Invoice and Payment

6.1 Invoice Requirements

- A. The Contractor must provide detailed invoices for services rendered which clearly outline the scope of billing. The Contractor must provide complete backup with Contractor invoices including signed estimates and all original copies of third-party invoices. The Contractor must also provide reconciliation of all projects approved for pre-billing within one day at their completion.
- B. All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) itemized description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.
- C. Invoices will be approved based upon completion of deliverables within a pre-approved Project Plan. Payments will be made upon approval of the Lottery Program Manager. All invoices must reflect actual work done.
- D. Lottery shall reimburse the Contractor for cost incurred (plus commission where applicable) only for services and/or merchandise authorized by Lottery, approved by the Program Manager, and provided for in the purchase order. Payment shall not exceed the amount approved by authorized estimate without submission and approval of a revised estimate.



- E. The 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 Contractor may be reimbursed for overnight travel and expenses incurred in connection with external production, if the State has agreed in advance and in writing to reimburse the Contractor for the expense at the State's current travel reimbursement rates.
- F. The Contractor will not be reimbursed for personnel labor or other costs incurred in connection with client account services, meetings, commissionable advertising, or costs associated with membership in or attendance at industry conferences, seminars, etc. The Contractor will not be reimbursed for any overtime costs incurred by the Contractor or by any Subcontractor or supplier, unless such costs have been specifically identified in an approved work estimate. The Contractor will not be reimbursed for asset management services as specified in Section 1.5A.
- G. Expenses for packaging, handling, shipping, postage and freight, travel, meals, lodging and per diem paid to or on behalf of outside talent, and services acquired through the Contractor's internal facilities or parent or subsidiary organizations shall be billed at cost. Additionally, the following items must also be billed at cost: talent renewals, licensing fees, television and radio dubs, and satellite and communications uplinks.
- H. The Contractor must pass on to Lottery all reductions in cost, such as volume discounts, media buying discounts, early payment discounts and/or unplaced media, in the fiscal year in which the originating expenses occurred.
- I. The Contractor must make timely payments to all subcontractors without waiting for Lottery payment of corresponding invoices. The Contractor must maintain a line of credit for this purpose.
- J. The Contractor must allow 45 days from the date of receipt of accurate and complete invoices and backup for receipt of payment. In addition, the Contractor may provide details for invoice discounts for early payment of monthly billings in Exhibit C.

6.2 Payment Methods

The Lottery will make payment for Contract Activities by Electronic Fund Transfer (EFT). 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).



STATE OF MICHIGAN
Contract No. 071B6600082
General Advertising Services – Michigan Lottery

EXHIBIT B

Reserved



STATE OF MICHIGAN
 Contract No. 071B6600082
 General Advertising Services – Michigan Lottery

**EXHIBIT C
 PRICING**

1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. 0.5% NET 15 quick or prompt payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.
3. The State can only commit funds in the fiscal year they are available; commitment of funds for future fiscal years is contingent upon enactment of legislative appropriations.
4. Prices quoted are firm for the entire length of the Contract.
5. Tax will be excluded from price. Sales Tax will be excluded 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. 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.

6. Commission Based Projects – Pricing Table

Commission fees, shown as percentages, will be used to compensate the Contractor for External Production, Media Placement and Pass-Through Billing projects. The fees are expected to compensate the Contractor for all management services related to the projects, including creative services, account services, production services, and media services. The State can only commit funds in the fiscal year they are available; commitment of funds for future fiscal years is contingent upon enactment of legislative appropriations. Annual NET Billings in the table below are estimates. The allocations and/or total billings may change in future years.

Deliverable	Estimated Annual NET Billings	% Commission Fee
EXTERNAL PRODUCTION PROJECTS	\$1,800,000.00	6.75%
MEDIA PLACEMENT PROJECTS	\$13,700,000.00	6.75%
PASS-THROUGH BILLING PROJECTS*	\$1,400,000.00	1%

**In certain instances where the Lottery maintains management of a project, Contractor is required to perform an administrative role limited to project accounting and billing ("Pass Through"). These programs will be identified by the Lottery as such prior to commencement of the project. Contractor will receive a 1% commission for Pass Through work up to and not exceed a total of \$10,000 for all work performed on Pass Through projects in a fiscal year.*

It is expressly understood that this contract is non-exclusive and that Contractor is not entitled to a commission for any services set forth in this contract that are performed by a different entity, nor for the sale of advertising space on Lottery assets unless Contractor is expressly engaged by Lottery in writing to perform or assist with such services.

10. Non-Commissionable Projects - Pricing Table

Flat-rate fees will be used to compensate the Contractor for In-House Production projects. The fees are expected to compensate the Contractor for all management services related to the projects, including creative services, account services and production services. The State can only commit funds in the fiscal year they are available; commitment of funds for future fiscal years is contingent upon enactment of legislative appropriations. Annual NET Billings in the table below are estimates. The allocations and/or total billings may change in future years.

Deliverable	Estimated Annual NET Billings	Flat-Rate Fee
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HTML5 Banner Display Ad		\$600
Rich Media Banner Display Ad		\$650
GIF Banner Desktop Display Ad		\$150
GIF Banner Mobile Display Ad		\$125
JPEG Digital Outdoor Ad	\$100,000	\$500
Small Format Print Ad		\$500
Large Format Print Ad		\$500
:10 Animated Lottery Asset (.FL)		\$1500
:15 Animated Lottery Asset – Video Only (.AVI or .MOV)		\$2000
JPEG for Nightly Drawing Show		\$500

In-house production project expenses not specified here will be negotiated on a case by case basis.



**STATE OF MICHIGAN
STANDARD CONTRACT TERMS**

Contract No. 071B6600082
General Advertising Services – Michigan Lottery

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Simons-Michelson-Zieve, Inc. dba SMZ (“**Contractor**”), a Michigan corporation. This Contract is effective on May 20, 2016 (“**Effective Date**”), and unless terminated, expires on June 30, 2018 (also see Project Request Section of Exhibit A).

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

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Mary Ostrowski, Buyer DTMB Constitution Hall 525 W Allegan St 1 st FLR NE Lansing, MI 48909 ostrowskim@michigan.gov (517) 284-7021 (p) (517) 335-0046 (f)	Jamie Michelson President & CEO SMZ 1200 Kirts Blvd. Suite 100 Troy, MI 48084 jamiemichelson@smz.com (248)269-4345 (direct) (248)219-9596 (mobile)

- Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Mary Ostrowski, Buyer DTMB Constitution Hall	Jamie Michelson President & CEO SMZ



525 W Allegan St 1 st FLR NE Lansing, MI 48909 ostrowskim@michigan.gov (517) 284-7021 (p) (517) 335-0046 (f)	1200 Kirts Blvd. Suite 100 Troy, MI 48084 jamiemichelson@smz.com (248)269-4345 (direct) (248)219-9596 (mobile)
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State:	Contractor:
Tim Shafer, Advertising and Promotions Director Michigan Lottery 101 E. Hillsdale Lansing, MI 48909 ShaferT@michigan.gov (517)335-1509	Pam Rensch EVP Group Account Director SMZ 1200 Kirts Blvd. Suite 100 Troy, MI 48084 preusch@smz.com (248)269-4388 (direct) (248)346-1994 (mobile)

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

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

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	



Privacy and Security Liability (Cyber Liability) Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>
Crime (Fidelity) Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Employee Theft Per Loss</p>	<p>Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as Loss Payees.</p>
Professional Liability (Errors and Omissions) Insurance	
<p><u>Minimal Limits:</u> \$5,000,000 Each Occurrence \$5,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u> \$50,000 Per Loss</p>	

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

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

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

7. MiDEAL Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all MiDEAL payments made to Contractor under the Contract including transactions with MiDEAL members and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
 Financial Services – Cashier Unit
 Lewis Cass Building
 320 South Walnut St.
 P.O. Box 30681
 Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.



The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

- 8. Extended Purchasing Program.** The Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
- 10. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 13. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 14. Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.
- In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.
- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted



deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 22, Termination for Cause.

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

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

17. RESERVED

18. RESERVED

19. RESERVED

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

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

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

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

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



- 23. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 24, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 24. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 25. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).
- The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.
- The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.
- Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.
- 26. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 27. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 28. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

**29. RESERVED****30. State Data.**

- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. **Extraction of State Data.** Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. **Backup and Recovery of State Data.** Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. **Loss of Data.** In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

31. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and,



(c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

32. Data Privacy and Information Security

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

33. RESERVED

**34. RESERVED**

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

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

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

- 36. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 22, Termination for Cause.
- 37. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 38. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 39. RESERVED**
- 40. RESERVED**
- 41. RESERVED**
- 42. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 43. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 44. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.



45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
50. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
51. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
52. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
53. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
54. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").