



STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management, and Budget
 525 W. Allegan St., Lansing, MI 48913
 P.O. Box 30026, Lansing, MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number **5**
 to
 Contract Number **071B4300059**

CONTRACTOR	BANK OF AMERICA
	4805 Town Center Road
	Saginaw, MI 48604
	Joseph Kiss
	(312)-992-6916
	joseph.kiss@baml.com
	CV0059727

STATE	Program Manager	Various	MULTI
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY				
ELECTRONIC PAYMENT CARD SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
June 1, 2014	May 31, 2019	2 – 1 Year	May 31, 2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		August 30, 2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$302,520.00		\$0.00	\$302,520.00	
Effective June 1, 2021, the Closing Letter Agreement is hereby attached to this contract. A transition period ending August 30, 2021 is in effect per section 2.171 of Article 2 – Terms and Conditions.				
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.				

**Program Managers
for
Multi-Agency and Statewide
Contracts**

AGENCY	NAME	PHONE	EMAIL
MSL	Paula Tarrant	517-580-6011	tarrantp@michigan.gov
LEO	Scott Beardsley	(313) 456-4925	beardsleys@michigan.gov
TREA	Joseph Avery	(517) 636-5350	averyj8@michigan.gov



June 1, 2021

State of Michigan
Unemployment Insurance
3024 W. Grand Blvd, Suite 12-150
Detroit, Michigan 48202
Attention: Debbie Ciccone

Dear Ms. Ciccone,

This letter agreement (this “**Letter Agreement**”) is entered into as of June 1, 2021 (the “**Letter Agreement Effective Date**”) memorializes certain terms and conditions to which the Department of Technology, Management, and Budget, State of Michigan (the “**State**”) and Bank of America, N.A. (the “**Bank**”) (collectively, the “**Parties**”) have agreed in reference to that certain Contract NO. 071B4300059 between the Parties with the effective date June 2, 2014 (the “**Original Agreement**”), as previously amended by that certain Contract Change Notice Number 1 between the Parties with the effective date March 1, 2017 (the “**First Amendment**”), Contract Change Notice Number 2 between the Parties with the effective date February 25 2019 (the “**Second Amendment**”), Contract Change Notice Number 3 between the Parties with the effective date March 18, 2020 (the “**Third Amendment**”), and Contract Change Notice Number 4 between the Parties with the effective date November 17, 2020 (the “**Fourth Amendment**”). The Original Agreement as amended by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment is referred to as the “**Amended Agreement.**” All of the terms and conditions set forth in this Letter Agreement are incorporated into the Amended Agreement and subject to its terms and conditions. To the extent that any term or condition of this Letter Agreement conflicts with any term or condition of the Amended Agreement, such term or condition of this Letter Agreement shall control. Unless otherwise indicated herein, capitalized terms used, but not defined, in this Letter Agreement have the meanings ascribed to them in the Amended Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the State and Bank, the State and Bank agree as follows.

1. Subject GFC Frozen Accounts. The Parties hereby enter into this Letter Agreement to address the disposition of all or substantially all of the prepaid debit card accounts that the Bank opened under the Amended Agreement, based on unemployment benefit recipient information provided by the State and which, as of the Account Determination Date (as defined below), are in a “closed for fraud” (also known as frozen) status imposed by the Bank and (a) were closed for fraud after the Bank’s Global Financial Crimes Group (the “**GFC Group**”) identified these accounts for closure, or (b) in the opinion of the GFC Group, meet the criteria for these accounts to be closed or to remain closed for fraud (the “**GFC Criteria**”). As used in this Letter Agreement, “**Subject GFC Frozen Accounts**” means the prepaid debit card accounts defined in this Paragraph 1.

2. Cardholder. Each person who is associated with a Subject GFC Frozen Account shall be referred to as a “**Cardholder**”.

3. Determination of Status of Subject GFC Frozen Accounts. On or before June 11, 2021, the Bank shall deliver to the State a comprehensive and definitive list of the Subject GFC Frozen Accounts (the “**Account Determination Date**”).

4. Notice of Further Reconciliation. Subject to applicable exceptions set forth below in Paragraph 7, the Bank shall have the right to provide notice to each Cardholder for a Subject GFC Frozen Account about the disposition of the Account and to instruct the Cardholder how to contact the State if the Cardholder intends to claim entitlement to the funds in such Account. The form of the notice shall be subject to the below provisions of Paragraph 15.1.

5. Disposition of Balances in Subject GFC Frozen Accounts. Following the Account Determination Date and no later than June 11, 2021, and subject to the exceptions set forth below in Paragraph 7, the Bank shall withdraw all funds in the Subject GFC Frozen Accounts for the purpose of returning those funds to the State (the “**Withdrawal**”, and the date of such Withdrawals, the “**Withdrawal Date**”).

6. Closure of Subject GFC Frozen Accounts. Following the Withdrawal Date and no later than June 11, 2021, and subject to the exceptions set forth below in Paragraph 7, the Bank will close the Subject GFC Frozen Accounts. The date on which the Subject GFC Frozen Accounts are closed shall be referred to as the “**Closure Date**”.

7. Exceptions to Withdrawal and Account Closures.

7.1. The Bank shall have no obligation to make a Withdrawal from, or to close any Subject GFC Frozen Account, where such Subject GFC Frozen Account is the subject of a pending error claim, litigation, or other dispute or subject to a judicial or administrative subpoena, seizure warrant, order, or restriction on transfer or where the Bank deems closure to be inconsistent with its legal obligations.

7.2. The Bank shall have no obligation to withdraw funds from a Subject GFC Frozen Account that represent (a) provisional credits, (b) permanent credits, (c) amounts that the Bank or any third party has made or provided to the Account, or (d) amounts that are the subject of a pending error claim, under Regulation E, or a claim under the “Zero Liability” policy of the cardholder agreement. The Bank also shall have no obligation with respect to such Subject GFC Frozen Accounts not to reverse credits under the foregoing clauses (a) and/or (b). If the Bank either retains funds or reverses credits issued in connection with this Letter Agreement and is informed later by the State that the Cardholder is eligible for benefits (see Paragraph 11.4 below), the Bank shall deliver to the State (or directly pay to the cardholder if required by applicable law) all such amounts it retained and a sum representing all such credits it reversed with respect to that Cardholder.

7.3. To the extent permitted by applicable law, the Bank shall inform the State of the details on Accounts where it has acted under this Paragraph 7 and provide the associated Data Files (as defined below) for those Accounts to the State in accordance with the below provisions of Paragraph 10.

8. Data Files. Commencing on the Closure Date, the Bank shall create data files for each of the Subject GFC Frozen Accounts. These data files shall reflect, among other information, the identity of the Cardholder, program code, account status, and final balance at the Withdrawal Date (“**Data Files**”).

9. Aggregate Positive Frozen Balance. The aggregate of the Withdrawals from the Subject GFC Frozen Accounts with a positive balance where a Withdrawal is made shall be the “**Aggregate Positive Frozen Balance**.”

10. Returning Transferred Frozen Funds to State. Following the Closure Date and no later than June 11, 2021, the Bank will transfer the Aggregate Positive Frozen Balance to the State (the “**Transferred Frozen Funds**”), in accordance with instructions from the State, along with the Data Files applicable to the Subject GFC Frozen Accounts. The date on which such transfers are completed shall be referred to as the “**Transfer Date**.”

11. Disposition of the Transferred Frozen Funds; Resolution of Cardholder Eligibility and Entitlements.

11.1. Each Cardholder shall have the right to attempt to validate or establish with the State an entitlement to some or all of the funds held in a Subject GFC Frozen Account at the Withdrawal Date. The State is responsible for determining a Cardholder’s eligibility whenever such an issue arises.

11.2. The State shall establish and maintain reasonable procedures for investigating, evaluating, and resolving the eligibility of all Cardholders in order to determine the Cardholders’ entitlement (if any) to some or all of the funds previously held in a Subject GFC Frozen Account, including, without limitation, in response to inquiries initiated by a Cardholder (“**Eligibility Review**”). The State will ensure that all such procedures established and maintained by the State are in accord with the United States Department of Labor guidelines, and any other applicable regulations and regulatory guidance. The State shall promptly complete an initial Eligibility Review of all Cardholders and promptly conduct additional Eligibility Reviews in response to inquiries by Cardholders.

11.3. Upon the prior written request from the State, as part of the State’s Eligibility Review or for any other reason concerning eligibility (including for the purposes of discussing the GFC Criteria as referred to below in Paragraphs 16 and 17), and only to the extent permitted by applicable law, regulatory requirement, or court order, the Bank will provide to the Michigan Emergency Management & Homeland Security Division (or other applicable state law enforcement agency or officer) the information the Bank has as to the reasons it froze the Subject GFC Frozen Account.

11.4. If the State determines, in response to an Eligibility Review or through any other review or process, that a Cardholder is entitled to some or all of the funds previously held in a Subject GFC Frozen Account, the State shall distribute the amount due to such eligible Cardholder.

11.5. All distributions to a Cardholder associated with a Subject GFC Frozen Account shall be made by the State from the Transferred Frozen Funds or other readily available funds by

check, not by warrant (if applicable). In distributing any amount to a Cardholder, the State will not be acting as the paying agent for the Bank. In distributing any such amounts, the State will not issue checks to any Cardholder that are drawn on an account with the Bank.

12. Reimbursement to Bank. If after a Cardholder is determined by the State to be eligible and the Bank pays such Cardholder some or all of the funds that had been in the Account as of the Withdrawal Date (such as due to a failure to pay by the State), the State shall reimburse the Bank from the Transferred Frozen Funds or from other available funds within ten (10) days of receiving an invoice from the Bank specifying such amount that the Bank has paid such Cardholder. The invoiced amount shall not exceed the amount originally transferred to the State for the Cardholder.

13. Returning Funds to the Bank. If required by applicable law, regulatory requirement or official published guidance, or legal process, to effectuate the return of funds to a Cardholder, the State shall return to the Bank funds attributable to that Cardholder's Account as of the Withdrawal Date for payment to that Cardholder. The State shall not be obligated to return such funds to the Bank to the extent that the State already paid such funds to that Cardholder and provided the Bank with reasonable written documentation of such payment.

14. Unclaimed Funds. With regard to any portion of the Transferred Frozen Funds that are neither paid to a Cardholder nor returned to the Bank, if there are any unclaimed property liabilities and obligations associated with the Accounts or such funds, the State expressly agrees that as of the Transfer Date it has assumed and become the holder of such liabilities and obligations for unclaimed property purposes and that it releases the Bank from any further liabilities and obligations for those purposes. As of the Transfer Date, the State (or another agency or official on its behalf) shall be solely responsible for, to the extent required by applicable law of a holder of unclaimed property liabilities and obligations:

14.1. reporting and remitting any necessary amounts as unclaimed property in compliance with applicable federal and state laws regarding escheatment and settlement of unclaimed property;

14.2. all requests for audits or voluntary disclosure agreement (or similar) programs, and resulting liabilities including any penalties and/or interest;

14.3. taking such other steps that are required to comply with and to discharge any unclaimed property liabilities and obligations associated with the Accounts or funds; and

14.4. receiving and responding to any Cardholder inquiries that concern unclaimed property.

The Bank shall provide reasonable assistance to the State (or another agency or official on its behalf) as reasonably requested in writing, including in providing Account information in addition to the Data Files as may be necessary for the State (or such other agency or official on its behalf) to perform its obligations assumed hereby.

15. Cardholder Support and Information Sharing.

15.1. Form notices that either Party intends to send to Cardholders in connection with this Agreement shall be provided to the other Party for review and comment at least seven (7) days in advance of such notices being sent.

15.2. Commencing on the Transfer Date and continuing through and until the date on which the State completes Eligibility Reviews for all Cardholders, the Parties shall share information, through their existing routines for information-sharing, about activity with respect to Cardholders (including the resolution of Eligibility Reviews and payments made or potentially owing to Cardholders) and the Parties' compliance with this Letter Agreement, if the other Party reasonably requests in writing such information and so long as disclosure of the requested information is not inconsistent with applicable law. The Parties will work through the best practical method for doing so at reasonable times.

16. Other Accounts.

16.1. Upon the Bank's reasonable written request, and as necessary for eligible Cardholders pursuant to the above provisions of Paragraph 7, the State shall promptly inform the Bank of a change in status of any Accounts.

16.2. Additional accounts that (a) the Bank designates following the Account Determination Date as "closed for fraud," when the GFC Group identifies the account for closure, or (b) the Bank determines will remain in a "closed for fraud" status when, in the opinion of the GFC Group, the Account meets the GFC Criteria are referred to in this Letter Agreement as the "**New GFC Frozen Accounts.**" The GFC Criteria will be reviewed with the State, the Michigan Emergency Management & Homeland Security Division or other applicable state law enforcement agency or officer to the extent permitted by law.

16.3. The Parties will work together to coordinate the return to the State of the aggregate frozen funds in New GFC Frozen Accounts. The Parties anticipate using procedures that track those set forth in this Letter Agreement for the Subject GFC Frozen Accounts and that the other relevant terms and conditions in this Letter Agreement also will apply to the New GFC Frozen Accounts. The Parties shall memorialize such procedures in writing.

17. New Accounts. The Bank shall have the ability to decline to establish a new prepaid debit card account where the Bank determines that it would put the prospective account in a "closed for fraud" status immediately upon opening based on the application of GFC Criteria (a "**Disqualified Account Determination**"). The Bank shall identify to the State immediately all Disqualified Account Determinations and return to the State any funds that would have been used to open such accounts.

18. Future Reviews. The Parties recognize that they are creating a new process and, as such, agree to review this process, or any aspect of it, at least on a calendar quarter basis and make reasonable adjustments for improvement. The Parties shall memorialize such procedures in writing.

19. No Third-Party Beneficiaries. Nothing in this Letter Agreement, express or implied, is intended to confer, nor shall anything herein confer on, any person other than the Parties, any rights, remedies, obligations, or liabilities.

The duly authorized representatives of each of the Parties execute this Letter Agreement as of the Letter Agreement Effective Date. The State represents and warrants that the Department of Technology, Management-Procurement has issued and duly executed a “Contract Change Notice” for the proposed changes set forth in this Letter Agreement.

State of Michigan
Department of Technology, Management

Bank of America, N.A.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



STATE OF MICHIGAN CENTRAL PROCUREMENT SERVICES

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**

to

Contract Number **071B4300059**

CONTRACTOR	BANK OF AMERICA
	4805 Town Center Road
	Saginaw, MI 48604
	Joseph Kiss
	(312)-992-6916
	joseph.kiss@baml.com
	CV0059727

STATE	Program Manager	Various	MULTI
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY				
ELECTRONIC PAYMENT CARD SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
June 1, 2014	May 31, 2019	2 - 1 Year	May 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>		<input type="checkbox"/>		May 31, 2021
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$102,520.00	\$0.00	\$102,520.00		
DESCRIPTION				
Effective March 18, 2020, this contract is exercising one (1) option year. The revised contract expiration date is May 31, 2021.				
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.				

**Program Managers
for
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
MSL	Paula Tarrant	(517) 580-6011	paula.tarrant@michiganlottery.com
LEO	Scott Beardsley	(313) 456-4925	beardsleys@michigan.gov
TREA	Joseph Avery	(517) 636-5350	averyj8@michigan.gov



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

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **071B4300059**

CONTRACTOR	BANK OF AMERICA
	4805 Town Center Road
	Saginaw, MI 48604
	Joseph Kiss
	(312)-992-6916
	joseph.kiss@baml.com
	CV0059727

STATE	Program Manager	Various	SW
	Contract Administrator	Joy Nakfoor	DTMB
		(517) 249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY

ELECTRONIC PAYMENT CARD SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
June 1, 2014	May 31, 2019	2 - 1 Year	May 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		May 31, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$102,520.00	\$0.00	\$102,520.00		

DESCRIPTION

Effective February 25, 2019, this contract is exercising one (1) option year. The revised contract expiration date is May 31, 2020.

Please note the Contract Administrator has been changed to Joy Nakfoor (nakfoorj@michigan.gov, 517-249-0481).

Please note the TED Program Manager has been changed to Scott Beardsley (beardsleys@michigan.gov, 313-456-4925).

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

**Program Managers
for
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
MSL	Paula Tarrant	(517) 580-6011	paula.tarrant@michiganlottery.com
TED	Scott Beardsley	(313) 456-4925	beardsleys@michigan.gov
TREA	Joseph Avery	(517) 636-5350	averyj8@michigan.gov



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1

to

Contract Number 071B4300059

CONTRACTOR	Bank of America
	4805 Towne Center Road
	Saginaw, MI 48604
	Joseph Kiss II
	(312) 992-6916
	joseph.kiss@baml.com
	*****6609

STATE	Program Manager	See Attached	MULTI
	Contract Administrator	Joshua Wilson	DTMB
		(517) 284-7027	
		wilsonj31@michigan.gov	

CONTRACT SUMMARY

ELECTRONIC PAYMENT CARD SERVICES - INCLUDING ELECTRONIC PAYMENT CARD SERVICES - INCLUDING DEBIT CARD AND DIRECT DEPOSIT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 1, 2014	May 31, 2019	2 - 1 Year	May 31, 2019

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45	N/A
ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$102,520.00	\$0.00	\$102,520.00		

DESCRIPTION

Effective March 1, 2017, this Contract is amended as follows:

- 1) Lottery is authorized to utilize Contract and pricing for cardholders (Section 1.061.1.b).
- 2) Change Contractor's Project Manager to Joseph Kiss (Section 1.031).
- 3) Update Effective Date and Expiration Date on cover to match Section 2.001.
- 4) Change Contract Administrator to Joshua Wilson (Section 2.021).
- 5) Add Contract Compliance Inspector/Program Manager for Lottery (Section 2.022):

Paula Tarrant
Michigan Lottery
101 E. Hillsdale
Lansing, MI 48933
(517) 580-6011
TarrantP@michigan.gov

- 6) Add attached Change Notice No. 1, Article 1 - Statement of Work.
- 7) Add Attachment A1 - Michigan Lottery Government Prepaid Card Schedule of Fees for Government Agencies (Cardholder Fee Schedule).
- All other terms, conditions, specifications, and pricing remain the same per Contractor and Agency agreement, and per DTMB Procurement approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
LOTT	Paula Tarrant	(517) 580-6011	paula.tarrant@michiganlottery.com
LARA	Clayton Tierney	(313) 456-3190	TierneyC@michigan.gov
TREA	Sara Gross	(517) 636-5350	GrossS1@michigan.gov

STATE OF MICHIGAN

Contract No. 071B4300059
Electronic Payment Card Services

ARTICLE 1 - STATEMENT OF WORK CHANGE NOTICE NO. 1

Overview

The Lottery awarded over \$1.9 billion in winnings during the fiscal year of 2016. Prize winnings of greater than \$600 and up to and including \$50,000 must be claimed at either a Lottery Claim Center (currently have 6), at an authorized bank claim center, which are located in the upper portion of the lower peninsula and the upper peninsula or at one of our 4 recently added Michigan Secretary of State branches. Details on claiming prize winnings can be found at https://www.michiganlottery.com/claim_prizes.

When a player claims a prize at one of our lottery authorized claim centers they have the option to receive their winnings via Check or Automated Clearing House (ACH) into bank account.

While using ACH as the method to deposit winnings into a bank account; this process take 2-3 days for the ACH to clear. A check although convenient means another stop for the player at a bank or check cashing location to secure their winnings. That's not to mention the additional fees this might cost the player.

Another key issue to consider is the unbanked or underbanked players. These player do not have an easy way to claim and manage their winnings if they choose the check option. They deal with additional delays as well as fees from predatory check cashers. Also, once the player cashes their check, they then have to manage all their winnings as Cash.

Bank of America (BOA) Prepaid

The selected BOA prepaid product is a one-time issuance Visa prepaid debit card issued by BOA. The card (although not personalized with the player's name at the time of issuance) is registered to the cardholder by linking the player's personal information to the card. The player's personal information includes at minimum their full name, social security number and current address.

Once winnings are loaded on this card, the card has no client or cardholder fees associated with loading the funds or monthly account maintenance. The cardholder has multiple fee-free transaction types that can be performed to access the funds immediately after they are loaded and the card can be used everywhere Visa is accepted. Cash can be withdrawn at ATMs, point-of-sale locations where cash-back is offered and at any Visa bank or credit union location for over-the-counter teller cash access. See attached Michigan Lottery Government Prepaid Card Schedule of Fees for Government Agencies - Cardholder Fee Schedule for applicable fees.

There are limits on how much money can be loaded onto a prepaid BOA card. The limits are configurable and should be established at no greater than \$25,000.

Solution Overview

The BOA prepaid product will be offered as an option that allows players to:

- claim a prize without access or use of a bank account
- have a different spending mechanism to manage their winnings
- have a safer channel to manage their winnings than handling cash

The authorized claim centers will have an inventory of BOA prepaid cards on hand. The cards will be un-activated and have no monetary value until they are activated and loaded by the claim process. Also, the cards will be delivered in sealed envelopes where the card number is not exposed.

During the claim process, the player can select to have their net prize winnings loaded to a BOA prepaid card. If the player chooses that option, the Claim Center Clerk will take one of the cards from inventory and enter the required card information (proxy card number – 16-digit card number is not visible through sealed envelope, player's personal

Information, net winnings to be loaded on the card; some of this information will automatically be populated by the system) into the Lottery's prize payment system. The system will send the applicable card information and player details via an Application Program Interface (API) call to BOA to initiate the card registration and load process. BOA will send a confirmation that winnings are loaded onto the card. The clerk will then provide the activated card to the player. The player will open the packaging and call BOA or log on to a cardholder website to activate the card. Once that is done the funds will be available for the player to use immediately.

Once load confirmation has been received by the Claim Center Clerk and the card has been provided to the player, the responsibility of customer service and management is handed to BOA. Any inquiries about the card or functionality will be directed to BOA customer service.

Note: The use of this method of payment does NOT change any processes related to tax form issuance, PA-11 checks, compliance or fraud checks currently in place.

Integration Requirements:

Michigan Lottery is responsible for any system upgrade costs that are required in the IGT system. BOA is responsible for providing integration requirement documentation, implementation, testing and support to IGT at their own costs.

Phase 1 - Lottery Claim Centers

For phase 1 the lottery plans to allow players claiming their lottery prizes at authorized lottery claim centers to have their winnings loaded onto a BOA prepaid card. This payment option would be added in addition to the existing payment methods (Check or ACH).

Phase 2 – Michigan Secretary of State Branches (SOS)

The subsequent roll out of the BOA solution would be into the designated SOS centers. This would be an easy extension to the lottery claim center process where the claim form will capture the required card information onto which winnings are going to be loaded. Once the claim is approved at the claim center the card is registered to the player and the winnings are loaded onto the card. This will provide another cashless option at the SOS center allowing player immediate access to their funds. This phase will require approval from SOS but shouldn't require any additional development or implementation. This addition may require some inventory management changes.

CARDHOLDER FEE SCHEDULE

Effective January 1, 2017

There are no fees to the government client for Government Prepaid Card programs. All fees are assessed to the cardholder.

Services with No Fees

PURCHASE TRANSACTIONS	
Purchase at merchants (signed, using PIN, online, phone, or mail purchases)	No Fee
ATM TRANSACTIONS*	
Bank of America and Allpoint ATM Withdrawal (in the U.S.)	No Fee
ATM Balance Inquiries (all ATMs)	No Fee
OTHER SERVICES	
Online, Automated, Live or International Customer Service Inquiry	No Fee
Online Funds Transfer	No Fee

Services with Fees

ATM TRANSACTION FEES*	
Non-Bank of America or Allpoint ATM Withdrawals (in the U.S.)	\$2.00 per transaction
ATM Withdrawal International (all ATMs outside the U.S.)	\$3.00 per transaction
Declined Transaction (ATMs only)	\$0.50 per declined transaction
OTHER SERVICE FEES	
Teller Cash Access (Available at financial institutions that accept VISA cards) (Limited to available balance only)	No Fee for first withdrawal each deposit period, \$5.00 thereafter.
Emergency Cash Transfer (in the U.S.)	\$15.00 per request
Card Replacement Domestic	No fee for first replacement each year, \$5.00 thereafter
Card Replacement - Express Delivery (additional charge)	\$15.00 per request
Card Replacement (outside the U.S.)	Quote provided at time of request, as price varies by country
Mailed account statement	\$1.00 per statement
International Transaction Fee	3% of U.S. Dollar amount of transaction
Check Issuance Upon Account Closure	\$5.00 per request

*ATM owners may impose an additional "convenience fee" or "surcharge fee" for certain ATM transactions (a sign should be posted at the ATM to indicate additional fees); however, you will not be charged any additional convenience or surcharge fees at a Bank of America or Allpoint ATM. A Bank of America or Allpoint ATM means an ATM that prominently displays the Bank of America or Allpoint name and logo. Balance inquiries may not be available at all ATMs outside the U.S.

An ATM Transaction Decline occurs when you request an amount greater than your balance or you incorrectly enter your PIN more than four times.

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. 071B4300059
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Bank of America 2600 W. Big Beaver Road Troy, MI 48084	Ken Harroun	Kenneth.harroun@baml.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 631-0550	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	See Sec 2.022			
BUYER:	DTMB	Lance Kingsbury	517-284-7017	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)			
Electronic Payment Card Services – including Debit Card and Direct Deposit			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 Years	June 1, 2014	May 31, 2019	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$102,520.00	

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
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MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$102,520.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07113200049. 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 #: 071B4300059

FOR THE CONTRACTOR:	FOR THE STATE:
Bank of America	Signature
Firm Name	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
	Enter Name of Agency
Date	Date



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

Contract No. 071B4300059
Electronic Payment Card Services – including Debit Card and Direct Deposit

Buyer Name: Lance Kingsbury
Telephone Number: 517.284.7017
E-Mail Address: kingsburyl@michigan.gov



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Attachment A – Price Proposal for UIA Transactions

Attachment B – Price Proposal for UIA Transactions and Other State Agencies' EPC Transactions

Exhibit 1 Security Requirements

Exhibit 2 What Is an Incident? (Brochure)

Exhibit 3 Safeguard Requirements of Confidential Data

Commercial Prepaid Card Service Addendum

Treasury Services Agreement General Provisions

Attachment C – Vendor, Contractor, or Subcontractor Confidentiality Agreement



DEFINITIONS

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

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

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

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

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

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

CCI means Contract Compliance Inspector.

Days mean calendar days unless otherwise specified.

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

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

EPC means Electronic Payment Card

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

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

Incident means any interruption in any function performed for the benefit of the State.

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

MAIN means the Michigan Administrative Information Network.

NCUSIF means National Credit Union Share Insurance Fund, providing deposit insurance of credit union members.

ODFI means the Originating Depository Financial Institution.

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

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

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

PPD means prearranged payment and deposit, ACH SEC code used to credit or debit a consumer account.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes



the use of these materials as a fuel substitute or for energy production.

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

Reserved means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

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

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

SLA means Service Level Agreement.

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

State means the State of Michigan, including its departments, divisions, agencies, sections, commissions, officers, employees, and agents.

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

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role. Subcontractor, for purposes of mandatory disclosures and other requirements, see, e.g., **Section 2.027**, **Section 2.231**, and **Section 4.018**, includes its employees, representatives, agents, and servants.

Treasury means the State of Michigan, Department of Treasury.

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

UI means Unemployment Insurance.

UIA means Unemployment Insurance Agency.

Unbanked means not one person in the household having a checking or savings account.

Under banked means at least one person in the household having a checking or savings account with the household continuing to rely on alternative financial services, namely non-bank check cashing services, non-bank money orders, payday loans, pawn shops, and rent-to-own agreements.

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

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

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for Electronic Payment Card Services (EPC) to be used by multiple agencies within the State of Michigan to implement an electronic payment solution for the disbursement of warrants for Vendors, Payroll, Retirement, Income Tax, and Unemployment Insurance (UI) Benefits.

The Department of Licensing and Regulatory Affairs (LARA), Unemployment Insurance Agency (UIA), will also be seeking electronic payments for Direct Deposit in addition to the EPC with this Contract.

For UIA services, the period of Contract award through May 31, 2014, will be for implementation and transition for the Contractor with testing to begin as soon as possible; no payment will be made to the Contractor during this period. The Contractor must begin providing all services, without interruption, on June 1, 2014. For State Agencies under Treasury Oversight services, implementation and transition may occur at any time during the Contract period.

1.012 Background

The objective of the State is to maintain the reduced cost and the efficiencies gained through its UI EPC program established in 2008, while also expanding the program to other agencies. The goal is to offer the EPC option to disbursement programs of all agencies (where appropriate) under the scope of services of this Contract. These additional EPC services might be offered through separate cards with separate terms of service, or through a single State-wide card.

1.020 Scope of Work and Deliverables

1.021 A. In Scope for State Agencies under Treasury Oversight

The Contractor must provide EPC services to the State. The State will originate payments in Automated Clearing House (ACH) format using the National Automated Clearing House Association (NACHA) standards and send them to the Contractor. The Contractor must accept the incoming ACH file and fund each individual EPC according to the Contract specifications. The Contractor must comply with all Work and Deliverables listed in section 1.022.

The CCI will be with the Department of Treasury, Receipts Processing Division (see section 2.022). DTMB, MAIN functions like a Subcontractor for Treasury. All payment files are sent to the Originating Depository Financial Institution (ODFI) by DTMB, MAIN. The ODFI will generate the outgoing ACH file to the Contractor. All payments, cancellations, reversals, reclamations, and returns are routed through the ODFI.

The business objectives of this Contract follow:

1. Immediate access to payments by Payees without delay in mail delivery.
2. No check cashing fees for unbanked Payees.
3. Significant savings in the cost of purchasing, securing, accounting for, and maintaining blank check stock.
4. Eliminates the reissuance and stop payments required for checks lost in the mail or stolen.
5. Reduces burden to Treasury and DTMB in the processing of paper warrants.
6. Reduces fraud associated with theft or lost checks.
7. Provides business continuity in the event of a disaster.
8. Electronic payments are better for the environment.
9. High audit capability as electronic payment transactions leave a specific footprint that supports a high degree of accountability, financial integrity, and reduction of fraud.

1.021 B. In Scope for UIA

The Contractor must provide EPC and Direct Deposit services to the UIA. The State will originate payments in ACH format using NACHA standards and send them to the Contractor. The Contractor must accept the incoming ACH file and either 1) transfer the funds to each individuals account via ACH or 2) fund each individual EPC according to the contract specifications. The Contractor must comply with all work and deliverables listed in section 1.022.

The CCI will be with the UIA (see section 2.022). All payment files are sent directly to the Contractor by UIA. All payments, cancellations, reversals, reclamations, and returns are routed through the Contractor.

The business objectives of this Contract are to:

1. Continue to provide Direct Deposit and EPC options for unemployment claimants.



2. Provide flexibility for claimants to access benefit payments.
3. Maintain and improve the timeliness and ease of accessing benefit payments.
4. Reduce fees charged to claimants as they use the EPC.
5. High audit capability as electronic payment transactions leave a specific footprint that supports a high degree of accountability, financial integrity, and reduction of fraud.
6. Have minimal impact on the environment.
7. Reduce fraud by improving the verification of Cardholder identity.

1.022 Work and Deliverable

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

A. Contactor Institution Requirements:

1. The Contractor, if not a financial institution, must be affiliated with a financial institution, and must retain that affiliation throughout the course of the Contract.
2. The Contractor must be affiliated with either VISA or MasterCard and be Electronic Funds Transfer (EFT) capable using NACHA, ACH format, Preauthorized Payment and Deposit (PPD) standards (see also section 1.022.G.1).
3. The Contractor must have all card production and call center services be executed within the United States.
4. The Contractor must maintain certification/membership and compliance with Federal Deposit Insurance Corporation (FDIC) or NCUSIF rules and regulations.

The Bidder must provide evidence of certification/membership and compliance with FDIC or NCUSIF rules and regulations with your proposal.

- a. Contractor deposits must be insured by the FDIC or NCUSIF as provided by law and regulations.
- b. Contractor agrees to assume all Regulation E responsibility to the card and provide Regulation E protection to all Cardholders (see also section 1.022.G.6).
- c. The Contractor must provide that all accounts set-up for Cardholders under the EPC program are insurable to FDIC limits per individual payments.

B. Initial Setup and Ongoing Operations

1. The Contractor must be ready to issue cards, accept deposits from the State, and fund Payment Cards on the Contract start date, unless agreed to by both parties through negotiation.
2. Contractor must provide training and instructional materials for State staff on the use of the proposed system. Contractor provides, at no cost to the State or Cardholders, materials created for card usage and training.
3. Contractor must provide call center support to expedite assistance for State employees assisting on State payments. Queries made via phone or email must be responded to within two hours.
4. Provide the location of the Customer Service Call Center(s) for electronic fund distribution services (see also section 2.232).
5. The Contractor must work with the State and other contractors to perform services/deliverables, assist in problem resolutions including, but not limited to, establishing new communications channels, downtime, testing, etc. (i.e. DTMB, UIA, Treasury, information technology systems contractors, etc.).

C. Services Provided to Cardholders

1. The Contractor must provide a schematic, via the website, updated at least monthly, with locations of all ATM's and direct teller sites inside the State of Michigan that offer fee free transactions.
2. It is imperative that recipients living in Canada are able to access the Contractor's product both through ATM's and POS terminals.
3. The Contractor must provide secure access to Cardholders to review their balance/transaction accounts via ATM, telephone, and Web inquiry at no charge to the Cardholders.



4. Contractor must provide Customer Service support via a toll free call center 24x7x365, which must be free of cost and unlimited.
5. Contractor's Customer Service Representatives should be trained to resolve the majority of the issues presented by callers including:
 - a. Issuance of cards and replacement cards.
 - b. Pin changes, withdrawals, account balances.
 - c. Fraudulent use of cards, account overdrafts, etc.
6. Contractor must provide, at no cost to the Cardholder, secure access to a website for all Cardholders to obtain account information 24x7x365.
 - a. The Contractor's website should provide customers with the ability to view monthly statements, change pin, locate ATMs throughout the world, etc.
 - b. Cardholders must be able to access up to 180 days of detailed transaction history and balance information, at a minimum.
 - c. Identify all other options available for Cardholders to obtain Account information 24/7/365.
7. Contractor must include a method of referring customer questions or complaints that more properly come under the State's jurisdiction (such as regarding eligibility for Unemployment Insurance, and determination of benefit amount) from the Contractor's call center to the State Agency's call center in a customer oriented fashion.
8. The Contractor must respond to Cardholder inquiries regarding card transactions within 24 hours.
9. Contractor must provide customer support for Cardholders who contact the Customer Service Center using Teletypewriter (TTY) services.
10. Contractor must provide support to Cardholders who require additional language support (include language support options available).
11. In the event a Cardholder wishes to dispute a transaction posted to their account, they must first call Contractor's Customer Service Center, where a Customer Service Representative can review the charge with the Cardholder.
 - Should the Cardholder still wish to dispute the transaction, the Customer Services Representative must outline the dispute procedures and any required correspondence to the Cardholder.
12. The Contractor must establish processes to handle disputes and reports of unauthorized usage. Provide details of timeline and process.

D. General Account Features

1. The State Agency's account must not be charged prior to the settlement date of the payments.
2. Contractor must reimburse the Payee for reasonable bank related expenses for failure to transfer funds to the Payee's financial institution or debit card account as directed by the State Agency.
3. At the discretion of the each State Agency, Cardholder accounts must remain open throughout the life of the Contract and can accept deposits from the State Agency at any time. The Contractor must deposit funds for Cardholders into previously established accounts before opening a new account.

E. ODFI Services for UIA

1. If the State Agency requires a prenote, the Contractor must send a prenote transaction through the ACH network to the receiving depository financial institution. Any notifications of change (NOC) received must be applied, thereby providing State Agency with the most accurate Cardholder banking information. Should the prenote reject, the Contractor must notify the State Agency, via an electronic file, to correct the information. The notice of prenote change or rejection must occur within two business days.
2. Entries initiated into the ACH system, either Pre-notification Entries or live dollar Entries, may be returned for specific reasons. Returns may be originated by the Contractor, ACH Operator, or the Receiving Depository Financial Institution (RDFI) per NACHA rules.
 - The Contractor's software must be able to recognize returns for delivery to the State ODFI.



3. Entries initiated into the ACH system, either Pre-Notification Entries or live dollar Entries, may be responded to by a NOC. NOCs may be originated by the Contractor or the RDFI.
 - a. The Contractor's software must be able to recognize NOCs.
 - b. The Contractor must send the State Agency an electronic file with the returned items or NOC changes.
 - c. Delivery must occur per NACHA rules.
4. Funds must be transmitted to the Cardholder's financial institution within one business day from the receipt of funds. The State Agency can initiate an ACH file up to 11:00 p.m. EST one business day prior to settlement date.
5. If there is a failure when depositing funds on a participant's account, the Contractor must report this failure back through the normal ACH process.

F. Debit Card Account Features

1. Contractor must immediately deposit all funds to the account designated within individual ACH records upon receipt, unless the deposit has a future effective date. The Contractor must make funds available to all debit card holder accounts at the opening of business on the settlement day assuming the ACH file is received by payment type from each State Agency by 11:00 p.m. EST the day before settlement.
2. Contractor must not restrict the number of signature or POS transactions a card holder makes on a daily basis. In addition, there must be no limits to the number or dollar amount of over-the-counter transactions Cardholders can perform at participating bank teller locations (as long as there is a sufficient balance in the account).
 - The Contractor must provide a Statewide ATM solution that offers three entirely fee free ATM withdrawal transactions per load to the State and the Cardholder (fee free includes, but is not limited to, the following: surcharge fees, convenience fees, network fees, interchange fees, and ATM operator/owner fees).
 - There will be no limit on the number of ATM transactions; however, as a fraud deterrent, the Contractor may require velocity limit restriction over a 24 hour period. The velocity limit does not affect POS or over-the-counter teller assisted transactions.
3. Cardholders must be able to receive cash back with purchase for PIN debit transactions, giving them convenient alternatives to access their deposited funds whenever and wherever they choose.
4. Unless authorized by the agency, there must be no specific disallowed transactions provided the transaction is performed at a merchant or ATM displaying the network logo found on the reverse of the card and there is sufficient balance in the account for the transaction amount requested (see also section 1.022.J.16).
5. The Contractor must not charge the Cardholder a monthly account fee.
6. Cardholders must have no line of credit and must not be able to make deposits or add value to the card. Cardholders are only provided access to funds which have been authorized and loaded by the State Agency.
7. The Cardholder must not be able to negotiate checks against the EPC or underlying account(s). The specific account information is only provided to the State and thus eliminates the ability of the Cardholder to negotiate checks against the card or the underlying account.
 - Cardholders must not be able to write checks against the card or underlying accounts.
8. Cardholders must have the ability to withdraw any applicable amount (e.g., "cash out" odd dollar and cents amounts, including amounts less than one dollar).
9. The Contractor must specify the number of denied transactions per month that will be provided at no cost to the Cardholder, and reduce cost/eliminate fees on denied transactions thereafter.
10. The Contractor must provide a means for the State Agency to manually load money into specific debit card accounts on an as needed basis.

G. Debit Card Requirements

1. The Card must be an Association branded VISA or MasterCard; must operate via the VISA or MasterCard network; must be accepted by any participating merchant; must allow for PIN-based and signature-based purchases; and must conform to all the governing bylaws and applicable association operating rules and procedures in effect at the time of transaction (see also section 1.022.A.2).



2. The Contractor must not deny any Cardholder referred by the State for participation in the EPC program unless required by federal law (i.e. the Patriot Act).
3. The Contractor must create a card for each individual, for each program, that includes a dedicated Routing/Transit and Account Number. All cards must be issued in the name of the individual as provided by the State Agency.

Note: For income tax refunds filed by joint filers, the Contractor must issue one card for each of the filers.

- The Contractor will be responsible for distribution of both initial and replacement cards to Cardholders. Distributions must occur within two business days of receiving the new account file (see also section 1.022.L.2.a and section 1.022.J.11).
 - Contractor must have the ability to mail EPCs outside the United States, including FPO/APO addresses.
 - Each EPC mailed to Cardholders, both initial and replacement, must contain inserts to assist Cardholder in using their card and managing their account such as instructional material, operating guidelines, and disclosure information. Contractor will be responsible for production of all instructional/training/marketing/informational materials.
 - Instructional materials for reporting an EPC as lost, stolen, or damaged by a Cardholder must be included with each new card account delivery package at the time of Cardholder enrollment.
 - The Contractor acknowledges that the State reserves the right to approve the name, design, and graphics of the card used by the Contractor. The card design will become property of the State of Michigan.
 - The State recognizes that a generic design may save costs. If this is the case, provide detailed explanation and reflect in pricing.
 - Provide a timeline and description of the card design process.
 - Provide a timeline and description of how the initial conversion and card issuance process will work.
4. Contractor must establish, activate, and re-activate a Cardholder's account at no cost to the Cardholder or the State Agency.
 5. The Contractor must obtain CCI approval from the State Agency before changing any policy affecting Cardholders.

Note: State approval will only be obtained for those changes over which Contractor has control. Changes imposed by the Card Associations, ATM networks, the Federal Reserve, or other regulators must be implemented in accordance with direction of those entities.

- State must be notified of changes affecting Cardholders in writing, by the Contractor, a minimum of 30 days prior to the implementation of the change.
6. The Contractor must notify Cardholders of any changes.
 - In accordance with federal Regulation E, Cardholders must receive a minimum of 21 days advance written notice of changes in policy or procedure that affect them.
 - Any notification of changes in Cardholder accounts must be sent to Cardholders by the Contractor. Cardholders may be notified through either the use of statement stuffers or direct mail to inform them about policy changes (see also section 1.022.A.4).
 7. EPCs must stay active for at least one year from last account activity.
 8. Contractor agrees to return all funds related to accounts not activated by the Cardholders under the EPC program to the State within one year or as agreed with the State Agency CCI or designee and per State and federal laws.
 - Cardholders must be required to activate their card and, by doing so, acknowledge all terms and conditions of the EPC program and participation.
 - The Contractor must produce a report based on a one year eligibility cycle of inactive debit card account identifying deposited funds in which there has been no activation (see also section 1.022.M.8).
 - Contractor must return funds to the State as abandoned and unclaimed property for activated cards with no activity and a remaining fund balance on the card after three years of activation (also see section 1.022.M.11).
 9. The operating network must disallow any transaction that causes the Cardholder to overdraw the account.



- In no event will the State be in any way liable for any transaction or other associated costs that cause the Cardholder to exceed the amount available in their account. The State will not have any responsibility or obligation for such overdrafts, nor for any other costs or liabilities incurred by the bank due to the actions of a Cardholder.

10. Contractor must not close a Cardholder's account without the concurrence of the State Agency. The Contractor reserves the right to suspend the account of any Cardholder who willingly abuses the program and/or commits fraud.
11. For the Debit Card program, in the event funds are deposited to a Cardholder's account before the Cardholder has activated their card, the Cardholder will have access to all deposit funds immediately upon activation.

H. Material Provided to Cardholders

1. The State will assist the Contractor with developing informational and marketing materials for customers as well as for training of State staff on EPC programs.
 - a. All customer informational material must be clear regarding the provided services, all possible customer fees involved, time frames in receiving cards, etc.
 - b. The State must have final approval of all materials.
2. The Contractor must provide a monthly mailed statement to Cardholders who opt to receive them detailing account activity on the card as well as making this information accessible online.

I. Information and Data Security Requirements

1. Security Goals. The security utilized must accomplish the following:
 - a. Verification that the entity on the other end of the communication link is really the intended recipient of a transmission.
 - b. Undeniable proof of origin of transmitted data.
 - c. Validation that information has not been tampered with during transmission.
 - d. Assurance that data remains private during transmission.
2. SSAE 16. An annual SSAE 16, SOC 2 Type II is required to be provided to the State Agency within 30 days of completion of the audit report. The State reserves the right to perform additional testing.
3. Internal Audits. It is expected that the Contractor's Internal Auditor or other auditors will perform annual audits of the Contractor's ACH processes as required by NACHA Rules. The Contractor must submit the most current audit report or certification that the audit has been performed and the Contractor is in compliance. The reports or certification must be provided to the State CCI annually.
4. ACH Operator. Contractor must designate the ACH Operator they expect to use. The Contractor must maintain the confidentiality of data up through the point of being transmitted to the ACH Operator. In addition, Returns, NOCs, or other information that is received from the ACH Operator or other parties is considered confidential.
5. The Contractor is responsible for costs associated with establishing and providing secure and acceptable methods of transmitting Michigan confidential or sensitive information over telecommunication devices, for example data encryption, SSL, Public Key Infrastructure, dedicated leased line, etc.
 - a. The Contractor must use data encryption techniques whenever data is transmitted to and from a remote site with the exception of a dedicated leased line. The State uses a secure line (called Data Exchange Gateway DEG) as part of its current procedures and will maintain that method of file transmission.
 - b. For transactions with State Agencies, the cipher strength must be a minimum 128-bit or better and the minimum speed must be 56,000 BPS.
6. Contractor must comply with the Graham–Leach–Bliley (GLB) Financial Services Modernization Act, which governs the collection and disclosure of customers' personal financial information by financial institutions.
7. Contractor must retain records for a period of seven years, and may need to produce records or provide testimony as a keeper of record pursuant to a valid Court Subpoena.
 - a. Contractor must maintain a minimum of one year of on-line data, with data routinely archived to tape and securely stored at an off-site location.
 - b. Data must be purged in accordance with State directives.



- c. Data must be stored and accessible in compliance with applicable federal and State requirements. Should the need to obtain data from archive occur, State may submit a request for information to the Contractor.
 - d. Within the restrictions of federal banking regulations, the Contractor must allow State Agencies to obtain Cardholder account information, transactions, etc. without the necessity of a court order, subpoena or search warrant.
 - e. Contractor must provide all information requested on a subpoena in a State approved electronic data file. This includes, but is not limited to, debit card usage data pertaining to locations, dates, times and amounts.
8. The Contractor is responsible for backing up the data at least daily.
- a. The Contractor must work with the State, upon Contract award, to develop disaster recovery and business continuity plans for business processes that, if disrupted, could affect the Contractor's ability to deliver products or services to clients, meet regulatory reporting requirements, or efficiently conduct and manage business.
 - b. Contractor's disaster recovery program must comply with the requirements of the Office of the Comptroller of the Currency Banking Circulars and Federal Financial Institution Examination Council publications on contingency planning.
 - c. The reporting tools must to be available within five business days after a disaster.
9. Standard security protocols are to be applied/encryption of all Cardholder's information upon transmission.
10. The Contractor must provide a detailed description of their retention criteria for IP addresses and must have the ability to provide that information to the agency when requested.
11. The Contractor must provide a detailed, quality assurance/control report, annually, of the entire system.
12. All data transmissions/interfaces must meet the DTMB's encryption standards as outlined in DTMB Standard 1340.00.07 "Standard for Electronic data encryption" and DTMB Authoritative Policy 1340 "Information Technology Information Security Policy". Per DTMB's Standard "1340 Information Technology Information Security Policy", The State of Michigan's requirements for encrypting transmitted data are:
- a. Centrally managed digital certificates by DTMB
 - b. Approved data encryption methods include 3DES or AES with up to 256 bits, with 128 bits the absolute minimum for moving data over internally managed networks and 128 bit the required minimum for moving data over external networks
 - c. Message data integrity from source to host will be verified by making sure the message hasn't been modified since it left the storage source by adding an encrypted digest to the message, using either the MD5 or the SHA-1 algorithms.
13. The State of Michigan's requirements for data storage encryption:
- a. A minimum of 128-bit key must be used for all data storage encryption.
 - b. Whenever supported by the underlying product suites Transparent Data Encryption (TDE) should be used. TDE is based on a dual encryption method that uses a second encryption key that is stored in a file external to the encrypted database file.

I.2 Confidentiality Requirements

1. Confidentiality of Data and Information. All tax and benefit payment information is confidential. All of the payments that are originated through this Contract and resulting Contracts are considered confidential. The Contractor must not release any information related to the State's payments or inappropriately utilize information gleaned from the State's payment files.
- a. The system and Contractor staff assigned to work with restricted (e.g. sensitive or confidential) data must uphold all of the requirements for handling, storage, and processing of confidential/sensitive information for services provided under the Contract (see Exhibit 1, Security Requirements).
 - b. Taxpayer Related Data: The system and Contractor must uphold all of the requirements for handling, storage, and processing of confidential/sensitive tax and benefit information for services provided under the Contract (see Exhibit 3, Safeguard Requirements of Confidential Data).
 - c. Describe in detail how security requirements will be met (e.g., data security in transit, in storage and destruction, etc.).



- d. Under this Contract, each employee assigned must understand and agree to follow the guidelines for an authorized representative of the State. A Vendor, Contractor, Subcontractor Confidentiality Agreement must be signed by each employee of the Contractor and Subcontractor (if applicable) working on this Contract [see Exhibit 3, Attachment A (Safeguard Requirements of Confidential Data, Form 3337)]. Each employee of the Contractor and Subcontractor (if applicable) is required to accept personal responsibility for adhering to the confidentiality provisions of the Revenue Act section 205.28(1)(f) by signing Form 3337. The original, signed Forms 3337 Contractor Confidentiality Agreement must be forwarded to the CCI.
 - e. Treasury's Office of Privacy and Security provides a 35-minute web-based training course for Contractors, Subcontractors, temporary, and seasonal staff. The course link will be made available prior to the Department providing access to any State tax data. All safeguards required by the Department of Treasury will be explained during the course.
2. All information exchanged under this Contract must be kept confidential in accordance with the confidentiality provisions contained within sections 421.11(b) of the MES Act, MCL 205.28(1)(f) and MCL 205.28(2) of the Michigan Department of Treasury Revenue Act, which state, in part:

"Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department will not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department."

All information obtained by either the State or Contractor will not be disclosed except as necessary for the proper administration of and execution of the Contract. In the event, confidentiality statutes are amended, the State will notify Contractor of any changes.

No employee, agent, authorized representative, or legal representative of Contractor will disclose any information obtained by virtue of this section to any other division within their company or any other governmental agency, department, or unit within such governmental agency, to any other state or nation, or unauthorized third party. No tax returns or tax return information provided to Contractor will be duplicated or disseminated within or outside the company without the written approval of the CCI. Michigan's tax returns and tax return information remain the property of the Department of Treasury.

J. Debit Card and Fraud Security

1. Fraud Controls. The Contractor must provide all necessary security to guard against fraudulent access, fraudulent creation, and fraudulent receipt of the State's files or items on files must be included in the processing.
2. The State Agency will assume no liability for fraudulent transactions resulting through the EPC program.
3. Contractor must fully comply with Section 12 of the Code of Federal Regulations 205, Electronic Fund Transfers (Regulation E) and all applicable provisions that provide consumer protections to all Cardholders.
4. The Contractor must protect all Cardholders against fraudulent transactions through Regulation E, as well as VISA or MasterCard's Zero Liability policy.
5. All automated (i.e. IVR) card activation must require identity verification utilizing unique security keys from the Cardholder (i.e. debit card number, last four of social security number, street address, etc.).
6. The Contractor must suspend any card that has had five or more unsuccessful PIN entry attempts.
7. The Contractor must protect and keep Cardholder information confidential. Contractor must not offer for sale or use any form of Cardholder information for commercial and/or marketing purchases. Contractor must not use Cardholder information for marketing purposes, either for internal or external purposes. The Contractor must provide details of the security package, processes, and procedures in place to ensure confidentiality of the Cardholder's information to the CCI upon Contract award.
8. Should a Cardholder require a replacement of a lost, damaged, or stolen card, they must have multiple options of contacting the Contractor including, but not limited to, a Customer Service toll-free telephone number, website, or in writing.



9. Contractor must provide at least one replacement card per calendar year at no cost to the State or Cardholder.
10. The Contractor must immediately deactivate the card once it is reported as lost, damaged, or stolen. Funds must remain within the Cardholder's account and once a replacement card is received and activated, the Cardholder must be able to access their funds.
11. The Contractor must expedite delivery of replacement cards with the overnight delivery fee (if applicable) charged to the Cardholder (see Attachments A and B).
12. The Contractor must replace/issue a card within two business days of receiving a Cardholder request (see also section 1.022.L.2.c and section 1.022.G.3.a).
13. The Contractor's funding security feature must eliminate the ability of Cardholders to have access to the depositing card account number mitigating any risk of Cardholder or other sources of funding the card account.
14. The Contractor must allow the Cardholder to choose and change the PIN (with proper verification of their identity) at no cost and at any time through a secure website or by placing a toll-free telephone call (see also section 1.022.J.5).
15. The Contractor must provide certifications of transactions and provide them upon proper request.
16. The Contractor must use value load monitors to detect unauthorized deposits to Cardholder accounts.
17. The Contractor must define, and have in place, procedures and time frames needed to prevent card transactions based on specific demographics and must be presented to the State upon request..
18. The Contractor website must not allow customers to enroll in debit card programs; all enrollment information will be provided to Contractor via secure file from the State Agency.
19. The Contractor's other Security Issues (firewall security, user IDs, and passwords) must be used to protect the data transfer from unauthorized access.
20. The Contractor must provide the ability to prevent card transactions based on demographics provided by the agency (for example: by specific country, vendor type, certain retail establishments, etc.; see also section 1.022.F.4).

K. File / Data Transmission

1. The Contractor must process/update, on a daily basis, all demographic information provided by the State Agency.
2. The Contractor must accept reversals from the State Agency for any credit entries made in error to a Cardholder account per NACHA rules. Reversals may be for the full amount of the transaction, or for an amount less than the original transaction.
3. Contractor must offer a file delivery solution that allows the State Agency to send and receive ACH files via the Internet. The delivery method must leverage the Internet and be readily available software package to make transferring files simple and secure for the State Agency without added cost of proprietary software installation. Additionally, for the EPC, the Contractor must provide a daily "End Of Day" Refresh File, that contains Cardholder account and demographic updates which must be forwarded to each State Agency.
4. Contractor must supply State Agency with information and file formats that allow the agency to initiate funding to the Cardholder's account. Reconciliation of payments is managed between the State Agency and its ODFI. As the RDFI for the card funding transactions, Contractor must acknowledge receipt of the ACH loads with the ACH Operator. Contractor must support NACHA's PPD format.

L. Process Specifications

The State and/or federal laws require timely payments be made to recipients. To accomplish this, the Contractor must meet the following timelines:

1. Contractor will receive electronically, on a daily basis, from the State or ODFI:



- a. A new account file containing information necessary to set up new accounts and issue cards, direct deposit, and re-activate previously inactive accounts.
 - b. A payment file containing deposits with assigned account numbers and other required identifying information.
 - c. The data file transfer must be automated, requiring no manual intervention by the State Agency.
 - d. Identify file formats available or formats Contractor can accept.
2. Contractor understands that within two calendar days of receiving the new account file, the Contractor must:
 - a. Establish an account for the Cardholder within one business day.
 - b. Provide the State with the Cardholder's account number and any other information necessary for the State to begin making payments, via a website, segmented by payment type (see also section 1.022.G.3).
 - c. Issue card and appropriate information inserts to the Cardholder (see also section 1.022.G.3.a and section 1.022.G.3.c).
 - d. If for any reason this information is altered by the Contractor (change to account, termination of account, etc.), the Contractor must notify the State within one business day.
 3. New Account Creation:
 - The Contractor must mail cards to all new accounts within two business days following enrollment, regardless of enrollment method (batch or web) (see also section 1.022.L.2.c and section 1.022.G.3.a).
 4. On a daily basis, the State must receive from the Contractor for each program and payment type:
 - a. A file containing new Debit Card account numbers (see also section 1.022.M.1.e).
 - b. A file containing ACH returns.
 - c. A file containing any notifications of change (NOCs).
 - d. All other information necessary for the State to properly make payments (see also section 1.022.M.1).
 - e. The Contractor must send a response file, by payment type, to the State Agency acknowledging receipt and processing of the participant information. Included with this file are the participant's new Routing/Transit and Account number.
 5. The Contractor must identify file formats available to enable this process upon request.

M. Work Reports

1. The Contractor must provide daily and monthly activity reports for each payment type (e.g., Vendor, Income Tax, Payroll, Unemployment, and Retirement) and make these reports accessible electronically to the CCI, or designee, via File Transfer Protocols, including the following information:
 - a. Funds amount received (daily transfers)
 - b. Record count of daily transmission file
 - c. Dollar amount and record count of funds applied
 - d. Funds amount returned and account information – Transfer rejections
 - e. Number of new account cards issued
 - f. Number of new accounts activated
 - g. Number of accounts closed
 - h. Funds amount returned and account information – Inactive Accounts
 - i. Cards returned and destroyed.
 - j. Daily available balance of Funds on account
 - k. Daily report detailing accounts with identical addresses
2. Contractor must provide, upon request, any Cardholder account information obtained by the Customer Service Center such as phone numbers used by Cardholders or transcripts/recordings of conversations.
3. The Contractor must notify and provide to the State Agency a listing of non-activated cards within 30 days of card issuance.
4. When a Card is returned by the United States Postal Service as undeliverable, the Contractor must:
 - a. Notify the State within the negotiated timeframe.
 - b. Update the status of these cards in the Contractor's processing system.
5. Authorized users must have access control/reports by Payment Type (e.g., Vendor, Income Tax, Payroll, Retirement, Unemployment Benefits) as established by the CCI or Designee.



6. In the event that a transfer to a participants account should fail, the State Agency must be notified daily of any funding transactions that were rejected by the RDFI. The Contractor must provide a detailed account of failure to the State Agency for resolution.
7. The Contractor must produce a report, based on a one year eligibility cycle of inactive debit card account, identifying deposited funds in which there has been no activation. The Contractor must return those funds to the State (see also section 1.022.G.8.b).
8. Contractor must provide detailed fraud reports on a monthly basis.
9. The Contractor must provide the State Agency with summary data on the count and amount collected for each type of fee charged to Cardholders on a monthly/annual basis.
10. Contractor must provide an annual report of returned funds to the State as abandoned and unclaimed property for activated cards with no activity and a remaining fund balance on the card after three years of activation (see section 1.022.G.8.c).

N. Reserved (Additional Specifications)

O. Personnel

1. The Contractor must implement security measures before work begins.
2. The Contractor must complete background and criminal history checks for all staff involved with this Contract at Contractor's cost. Background checks include, but are not limited to:
 - a. Determine if the person has been charged or convicted of a felony;
 - b. Obtain criminal history check from local police and/or State Police; and
 - c. Fingerprint prospective employees as part of the background check with the policing agency.
3. The Contractor must not hire individuals until they have cleared the background check.
4. The Contractor must test all prospective employees for illegal drugs and must not be hired unless negative test results have been received. Illegal drugs include, but are not limited to: marijuana, cocaine, amphetamines, PCP (phencyclidine), and opiate (including heroin, morphine, and codeine).
5. The Contractor must conduct unannounced reviews of employee's compliance with work processing procedures and established internal controls.
6. The Contractor must establish and administer an anonymous tip embezzlement-fraud hotline to encourage workers to report such activity, if they become aware of it. The State Agency must be notified in writing within one business week of any such reports unless approved otherwise by CCI.

P. Environment – UIA

1. The system is a web-based COTS solution using HTML and JavaScript for eServices. The State of Michigan's Data Exchange Gateway (DEG) will be utilized for file exchanges using a Secure File Transfer Protocol.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must provide staff as necessary to provide all services in this Contract. Specific staff requirements are listed below; however, Contractor must provide any additional staff needed to meet the requirements of this Contract.

1. Project Manager: Ken Harroun.
2. Information Technology Manager: Vicky McManus.
3. Operational Contact: Sabrina Clark.

1.040 Project Plan

1.041 Project Plan Management

1. The Contractor must carry out this project under the direction and control of the CCIs.



2. Although there will be continuous liaison with the Contractor team, the CCIs will meet quarterly at a minimum, or as requested by the CCI, with the Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
3. Within five working days of Contract award, the Contractor must submit to the CCIs, for final approval, a detailed project plan. This final project plan must be in agreement with the Contractor's proposal and accepted by the State for Contract, and must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the Contract. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

1.042 Reports

1. The Contractor must provide the following UIA Specific reports:
 - a. Weekly Project Status Reports (format to be agreed upon) must be provided to the UIA Executive Sponsor, UIA CCI, and other key project personnel as identified by UIA.
 - b. Monthly Project Plan (format to be agreed upon) updates must be provided to the UIA Executive Sponsor, UIA CCI, and other key project personnel as identified by UIA.
 - c. Monthly Performance Reports (format to be agreed upon) must be provided to the UIA Executive Sponsor, UIA CCI, and other key project personnel as identified by UIA.
 - d. Weekly Issue logs (format to be agreed upon) must be provided to the UIA Executive Sponsor, UIA CCI, and other key personnel as identified by UIA.
2. The Contractor must provide the following reports for State Agencies under Treasury Oversight:
 - The Contractor must submit written weekly summaries of progress to the CCI which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Treasury CCI; and notification of any significant deviation from previously agreed-upon work plans. These reports are in addition to required information related to copies of taxpayer correspondence and recorded phone calls.

1.050 Acceptance

1.051 Criteria

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

- A. Performance and Reliability Evaluation (PARE)

The Performance and Reliability Evaluation will consist of three phases.

 1. PHASE 1 – Specifications Compliance Review
 - a. The first phase will be comprised of a compliance review of the specifications for the system listed in the Contract. This review will ensure all items are in compliance with the required specifications for the Contract. In the event the State Agency determines that any component or feature of the system does not comply with the mandatory specifications of the Contract, the State Agency reserves the right to cancel the Contract.
 2. PHASE 2 – Acceptance Test
 - a. The CCI will evaluate the system's performance based on the specifications provided in the Contract. The CCI will determine that the system is fully operational when all of the requirements listed in the Contract are met. It will be the CCI's responsibility to determine that the system is fully operational.
 3. PHASE 3 – Post Implementation
 - a. The performance period for Phase 3 is a period of 45 consecutive calendar days. The performance period will commence when the system is fully operational. During the performance period for Phase 3, there must be no more than three interruptions. During the performance period for Phase 3, there must be no individual interruption that lasts longer than four hours. An interruption is defined as failure in the Contractor-supplied system or database, which results in work stoppage.



Work stoppages resulting from network downtime, State Agency supplied equipment failure or State Agency supplied software malfunctions will not be included in the performance period.

1.052 Final Acceptance

Final Acceptance will be completed 45 days after Phase 3 of the PARE in section 1.051. During Final Acceptance, there must be no more than three interruptions. During Final Acceptance there must be no individual interruption that lasts longer than four hours (see section 1.051 for definition of interruption). Upon completion of Final Acceptance, the CCI will provide written acceptance of the system.

1.060 Pricing

1.061 Pricing

1. For authorized Services and Price List, see Attachments A and B.
 - a. Attachment A (Price Proposal for UIA Transactions).
 - b. Attachment B (Price Proposal for All UIA and Other State Agencies EPC Transactions): pricing will be based on processing all UIA and other State Agencies' EPC transactions (includes UIA volume).

Note: The Contractor may not charge for any fee not included on this schedule.

2. 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.

1.062 Price Term

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

1.063 Tax Excluded from Price

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

1.064 Reserved

1.070 Additional Requirements

1.071 Reserved



Article 2 – Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of five years beginning June 1, 2014, through May 31, 2019. All outstanding Purchase Orders expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (2.001, Contract Term, 2.003, Legal Effect, 2.044(c), Invoicing and Payment – In General, 2.130, Insurance, 2.140, Indemnification, 2.150, Termination/Cancellation, 2.211, Governing Law, 2.220, Limitation of Liability);
- (b) The most recent Statement of Work related to this Contract;
- (c) All sections from Article 2 – Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the Contract documents including the Commercial Prepaid Card Service Addendum and the Treasury Services Agreement General Provisions;
- (e) Any Purchase Order or Direct Voucher issued under the Contract; and
- (f) Bidder Responses contained in any of the RFP documents.

2.007 Headings

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



2.008 Form, Function & Utility

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

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is ruled invalid or unenforceable by a court of competent jurisdiction, it will be severed from the Contract and all remaining provisions will remain in effect.

2.010 Consents and Approvals

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

2.011 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the DTMB, DTMB-Procurement, Department of Treasury, and LARA-UIA (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **DTMB-Procurement is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contract Administrator within DTMB-Procurement for the Contract is:

Lance Kingsbury, Buyer Specialist
kingsburyl@michigan.gov
 Phone: 517.284.7017

2.022 Contract Compliance Inspector

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

UIA
 Debbie Ciccone, Manager
 Department of Licensing and Regulatory Affairs
 UIA Trust Fund
 Cadillac Building
 3024 West Grand Blvd., Suite 13-350
 Detroit, MI 48202
CicconeD@michigan.gov
 313.456.2507

State Agencies under Treasury Oversight
 Brenda L. Lindsay, Assistant Administrator
 Michigan Department of Treasury
 Receipts Processing Division
 P.O. Box 30788



Lansing, MI 48909
LindsayB2@michigan.gov
517.636.5382

2.023 Project Manager

The following individual will oversee the UIA portion of the Contract:

Clayton Tierney
Department of Licensing and Regulatory Affairs
3024 West Grand Blvd., Suite 13-650
Detroit, MI 48202

The following individual will oversee the Treasury portion of the Contract:

Sara Gross
Department of Treasury
Banking and Disbursement Manager
517.636.5350
GrossS1@michigan.gov

However, management of the project implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, or specifications of this Contract, including pricing and specifications.**

2.024 Change Requests

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in scope and the Contractor is not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effect on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change. The Contractor is not entitled to payment for any work or services the Contractor provides before it receives a duly executed Contract Change Notice.

2.025 Notices

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

**2.028 Covenant of Good Faith**

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

2.029 Assignments

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

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

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

2.030 General Provisions**2.031 Media Releases**

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq.*

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters.



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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) Quarterly direct invoices will be submitted to each authorized Agency. All invoices must reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

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

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

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

**2.047 Final Payment**

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

2.048 Electronic Payment Requirement

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

2.050 Taxes**2.051 Employment Taxes**

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

2.052 Sales and Use Taxes

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

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

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

2.062 Contractor Key Personnel

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

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

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

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency



circumstances, and resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

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

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

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

2.064 Reserved

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access. The Contractor will provide access during normal business hours.

2.067 Contractor Return of State Resources

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

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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



Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Services or Deliverables to any party other than the Contractor.

2.072 State Consent to Delegation

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

2.073 Subcontractor Bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Reserved

2.082 Facilities

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

2.090 Security

2.091 Background Checks

Refer to Section 1.022 Work and Deliverable; O. Personnel.

2.092 State Data

(a) Ownership. The State's data ("State Data," which will also be known and treated by Contractor as Confidential



Information) must include:

- (i) The State's data collected, used, processed, stored, or generated as the result of the Services; and
- (ii) Personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Services, 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 listed herein. 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 will survive the termination of the 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 Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must:

- (i) 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, the Contract and applicable law to avoid unauthorized access, use, disclosure, or loss;
- (ii) Use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and,
- (iii) 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 will survive the termination of the Contract.

(c) Extraction of State Data. Contractor must, within two 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 described in the Statement of Work, as a part of the Services, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted.

(e) Loss of Data. In the event of any incident, 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:

- (i) Notify the State as soon as practicable, but no later than 24 hours of becoming aware of such occurrence;
- (ii) 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;
- (iii) In the case of PII, at the State's sole election, (1) notify the affected individuals who comprise the PII 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 five calendar days of the occurrence; or, (2) reimburse the State for any costs in notifying the affected individuals;
- (iv) 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 24 months following the date of notification to such individuals;
- (v) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- (vi) Pay for any costs associated with the occurrence, including, but not limited to, any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- (vii) Without limiting Contractor's obligations of indemnification as further described in the 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; *provided*, notwithstanding anything to the contrary set forth in this Section 2.092(e)(vii) or any other provision of this Contract, the aggregate liability of Contractor for damages under this Section 2.092(e)(vii) shall not exceed One Million Dollars (\$1,000,000.00 (the "**Security Breach Indemnity Cap**"));
- (viii) Be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and,
- (ix) 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.

2.093 PCI Data Security Standard

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

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

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

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

2.100 Confidentiality

2.101 Confidentiality

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 will survive the termination of the Contract.

2.102 Meaning of Confidential Information

For the purposes of this Contract, the term "Confidential Information" will mean 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:
 - (i) Subject to disclosure under the Michigan Freedom Of Information Act;
 - (ii) Already in the possession of the receiving party without an obligation of confidentiality;
 - (iii) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights;
 - (iv) Obtained from a source other than the disclosing party without an obligation of confidentiality; or,
 - (v) 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 must be deemed to be Confidential Information.

2.103 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 the Contract or to use such Confidential Information for any purposes whatsoever other than the performance of the 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 the 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.

2.104 Cooperation to Prevent Disclosure of Confidential Information

Each party will 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 will 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 the Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

2.105 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 the Contract or any Statement of Work corresponding to the breach or threatened breach.

2.106 Surrender of Confidential Information upon Termination

Upon termination of the Contract or a Statement of Work, in whole or in part, each party will, within five calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party will destroy the non-State Data Confidential Information and will certify the same in writing within five calendar days from the date of termination to the other party.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. At all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

- (a) For seven years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor before examining the Contractor's books and records. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract must be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for three years after the later of the expiration date or final payment under the Contract.



2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

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

2.115 Errors

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

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.116 Data Privacy and Security

(a) Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described herein, Contractor will be 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 must at all times comply with all applicable State IT policies and standards, as more fully described at: http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html.

(b) Right of Audit by the State. Without limiting any other audit rights of the State, the State will have the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of the Contract. During the providing of the Services, on an ongoing basis from time to time and without notice, the State, at its own expense, will be 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 days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

(c) 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.

(d) The State's Right to Terminate for Deficiencies. The State reserves the right, at its sole election, to immediately terminate the Contract or a Statement of Work without limitation and without liability if the State reasonably determines that Contractor fails or has failed to meet its obligations under this Section.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

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



- (b) The Contract Appendices, Attachments, and Exhibits identify the services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by the Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Contractor procures equipment, software, or other Deliverable (including equipment, software, and other Deliverables manufactured, re-marketed, or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in the Contract.

The Contractor is responsible for all maintenance, repair, and replacement of all equipment throughout the life of the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

**2.126 Prohibited Products**

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

2.127 Consequences for Breach

In addition to any remedies available in law, it is a material breach of the Contract if the Contractor breaches any of the warranties contained in **Section 2.120**.

2.130 Insurance**2.131 Liability Insurance**

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

- (a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A -" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
- (g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (h) The Contractor must provide, within five business days, written notice to the Chief Procurement Officer of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
- (i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (j) The Contractor is responsible for the payment of all deductibles.
- (k) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (l) The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:



☒ **(i) Commercial General Liability**

Minimal Limits:

\$2,000,000.00 General Aggregate Limit other than Products/Completed Operations;
 \$2,000,000.00 Products/Completed Operations Aggregate Limit;
 \$1,000,000.00 Personal & Advertising Injury Limit; and
 \$1,000,000.00 Each Occurrence Limit.

Additional Requirements:

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

☒ **(ii) Umbrella or Excess Liability**

Minimal Limits:

\$5,000,000.00 General Aggregate

Additional Requirements:

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

Subrogation will be waived except with respect to workers compensation insurance.

☒ **(iii) Motor Vehicle**

Minimal Limits:

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

☒ **(v) Workers' Compensation Insurance**

Minimal Limits:

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

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

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable.

☒ **(vi) Employers Liability**

Minimal Limits:

\$100,000.00 Each Incident;
 \$100,000.00 Each Employee by Disease
 \$500,000.00 Aggregate Disease

☒ **(vii) Employee Fidelity (Crime)**

Minimal Limits:

\$1,000,000.00 Employee Theft Per Loss

Additional Requirements:

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

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



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

Minimal Limits:

\$3,000,000.00 Each Occurrence
\$3,000,000.00 Annual Aggregate

☐ **(ix) Medical Malpractice**

Minimal Limits:

(Small Provider)\$200,000 Each Occurrence
\$600,000 Annual Aggregate

(Large Provider)\$1,000,000 Each Occurrence
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$5,000 Each Occurrence

☒ **(x) Cyber Liability**

Minimal Limits:

\$1,000,000.00 Each Occurrence
\$1,000,000.00 Annual Aggregate

Additional Requirements:

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

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

☐ **(xi) Property Insurance**

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

2.132 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.131, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.133 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

2.134 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

**2.135 Certificates of Insurance and Other Requirements**

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverage afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Chief Procurement Officer, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification**2.141 General Indemnification**

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

2.142 Reserved**2.143 Employee Indemnification**

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

2.144 Patent/Copyright Infringement Indemnification

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

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's



sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorneys' fees, incurred by the State in defending against the claim during that period.

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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then



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

In the event of a strike or walk-out by employees of the Contractor or any Subcontractor(s), Contractor must continue to provide adequate staffing and resources necessary to perform all obligations under the Contract. Failure to do so will be considered a material breach of the Contract that poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

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



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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) Stop all work as specified in the notice of termination;
 - (ii) Take any action that may be necessary, or that the State may direct, to preserve and protect deliverable(s) or other State property in the Contractor's possession;
 - (iii) Return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (iv) Transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (v) To the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
 - (vi) Take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.101, Confidentiality.

(b) If the State terminates this Contract under Section 2.153, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.158 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.160 Reserved

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**. All Contract terms and conditions are applicable during the transition period.

**2.172 Contractor Personnel Transition**

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 Reserved**2.180 Stop Work****2.181 Stop Work Orders**

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

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



2.190 Dispute Resolution

2.191 In General

- (a) The Contractor must submit any claim related to this Contract to the State under Section 2.025 Notices, together with all supporting documentation for the claim.
- (b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.
- (c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.192 Informal Dispute Resolution

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

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 days, the Chief Procurement Officer, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of this Contract, Contractor must comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 *et seq.*, as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to



employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, as amended, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, as amended and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Reserved

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to (a) claims for infringement of United States patent, copyright, trademark or trade secrets; (b) to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; (c) to claims covered by other specific provisions of the Contract calling for liquidated damages; (d) to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract; (e) to losses arising out of or relating to a party's failure to comply with its obligations under Section 2.092 State Data, Section 2.100 Confidentiality, and Section 2.116 Data Privacy and Security; and (f) losses to the extent covered by a party's insurance. Notwithstanding anything to the contrary set forth in this Section 2.221 or any other provision of this Contract, the aggregate liability of Contractor for any and all damages under Section 2.092(e)(vii) shall not exceed the Security Breach Indemnity Cap.

2.230 Disclosure Responsibilities

2.231 Required Disclosures

(a) Within 10 days after receiving notice of any pending or threatened action, claim, order, decree, litigation, investigation, arbitration or other alternative dispute resolution proceeding, or any other proceeding by or before any



governmental authority, arbitrator, court or administrative agency (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.
- (v) A Proceeding involving revocation or suspension of any license Contractor must have to perform under this Contract.

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

(c) The Contractor must notify the State of any actions or proceedings referenced in Section 2.233, Bankruptcy and Insolvency, within 14 days of initiation; provide the State with a copy of all documents used to initiate any such actions or proceedings; and keep the State informed of the progress of the action or proceeding.

2.232 Call Center Disclosure

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

2.233 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

- (a) The Contractor files for bankruptcy protection;
- (b) An involuntary bankruptcy petition is filed against the Contractor;
- (c) The Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) The Contractor makes a general assignment for the benefit of creditors; or
- (e) The Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

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

2.240 Performance

2.241 Time of Performance

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

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

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time



periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 SLAs

- (a) SLAs will be completed with the following operational considerations:
 - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.
- (c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$5,000.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

2.244 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not



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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means.

2.250 Reserved

2.260 Ownership

2.261 Ownership of Work Product by State

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

The Contractor retains its ownership rights to all proprietary materials (i.e. User manuals, guides, etc.). The Contractor also retains all rights and titles to products and processes it has or could develop, improve, or modify during the Contract period for its use in providing its services to its clients and in the conduct of its usual and customary business. The State will, however, acquire rights to Deliverables that are for its exclusive use and is specifically created in conjunction with this Contract.

2.262 Vesting of Rights

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

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

**2.264 Ownership of Materials**

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

2.270 State Standards**2.271 Existing Technology Standards**

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Reserved**2.290 Environmental Provision****2.291 Environmental Provision**

Hazardous Materials:

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

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, state, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (i) the material is a Hazardous Material that may present a substantial danger, and (ii) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, release, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered



harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, release, disposal, processing, transport, and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Reserved



Attachment A – Pricing for UIA Transactions

Fee Pricing							
		Number of Fee Free	Fee Assessed To:		Fee Occurrence	Estimated Annual Units	Annual Cost
			State	Cardholder			
A. Customer Usage Fees							
1	Bank of America/Allpoint ATM Withdrawals – free and unlimited	Unlimited	N/C	N/C	Per Usage		
2	Non-Bank of America/Allpoint ATM withdrawals (in the U.S.)	0	N/C	\$0.85	Per Usage		
3	ATM Withdrawal International (all ATMs outside U.S.)	0	N/C	\$0.85	Per Usage		
4	Card Replacement – Domestic	Unlimited	N/C	N/C	Per Usage		
5	Card Replacement – Express Delivery (Domestic/International)	0	N/C	\$10.00	Per Usage		
6	International Transaction Fee	0	N/C	2.00%	Per Usage		
7	Teller cash withdrawal – free and unlimited (any MasterCard member bank)	Unlimited	N/C	N/C	Per Usage		
8	PIN & Signature point-of-Sale (POS) transactions – free and unlimited (including cash back)	Unlimited	N/C	N/C	Per Usage		
9	Live customer service – free and unlimited	Unlimited	N/C	N/C	Per Usage		
10	Customer service via IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
11	Transaction denied at ATM or teller for insufficient funds – free and unlimited	Unlimited	N/C	N/C	Per Usage		
12	Transaction denied at POS – free and unlimited	Unlimited	N/C	N/C	Per Usage		
13	Balance inquiry at ATM, IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
14	Balance inquiry via IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
15	Monthly electronic or mailed account statements – free and unlimited	Unlimited	N/C	N/C	Per Usage		
16	Inactivity fee – free and unlimited	Unlimited	N/C	N/C	Per Usage		
17	Account Closure with check issued – free and unlimited	Unlimited	N/C	N/C	Per Usage		
B. Card Program Fees							
1	Load Fee		\$0.00	N/C	Per Load	3,000,000	\$0.00
C. Direct Deposit (ACH) Fees (Bank Account for UIA Only)							
1	ACH Fee (per transaction)		\$0.005	N/C	Per ACH	4,000,000	\$20,000.00
D. Additional Fees							
1	Charge for ACH Transfer		\$2.00	N/C	File	252	\$504.00
E. Notes/Comments							
1	Value Added optional service – Emergency Domestic Cash via Western Union; \$15.00 per request. The Contractor will only implement this value added service under the State’s direction.						
2	<ul style="list-style-type: none">\$150,000.00 for transition communications support. These funds are to be managed in partnership with the State. Examples of transition communications include, but not limited to:<ul style="list-style-type: none">Letter to all cardholders letting them know of the pending transitionPostcard to all cardholders as an activation reminderFollow-up letter to all cardholders reminding them of the card coming “next week”Website contentPosters for Michigan Unemployment offices						



- Brochures
- Email content, if appropriate

Note: The cost for the welcome custom card package that each recipient will receive from the Contractor will not be expended from these funds.

- **\$150,000.00 to be expensed under State direction in support of IT/conversion costs.**
At Contract signing, the Contractor will make a payment, as directed by the State, in the amount of \$150,000.00.
- **\$50,000.00 additional funds in year two for continued efforts needed in IT and/or conversion support.**
The Contractor will make a payment, as directed by the State, in the amount of \$50,000.00 at the first anniversary of the Contract.
- **\$50,000.00 bonus incentive for each year the Contractor holds both P-card and UIA contracts.**
The Contractor will make an annual payment, per the State's direction, in the amount of \$50,000.00 once the Contract has been executed. In addition, for each year the Contractor holds both the P-card and UIA contracts, the Contractor will make a \$50,000.00 payment to the State, as directed, upon Contract anniversary.

N/C = No Charge


Attachment B – Pricing for All UIA and Other State Agencies* EPC Transactions

Fee Pricing							
		Number of Fee Free	Fee Assessed To:		Fee Occurrence	Estimated Annual Units	Annual Cost
			State	Cardholder			
A. Customer Usage Fees							
1	Bank of America/Allpoint ATM Withdrawals – free and unlimited	Unlimited	N/C	N/C	Per Usage		
2	Non-Bank of America/Allpoint ATM withdrawals (in the U.S.)	0	N/C	\$0.85	Per Usage		
3	ATM Withdrawal International (all ATMs outside U.S.)	0	N/C	\$0.85	Per Usage		
4	Card Replacement – Domestic	Unlimited	N/C	N/C	Per Usage		
5	Card Replacement – Express Delivery (Domestic/International)	0	N/C	\$10.00	Per Usage		
6	International Transaction Fee	0	N/C	2.00%	Per Usage		
7	Teller cash withdrawal – free and unlimited (any MasterCard member bank)	Unlimited	N/C	N/C	Per Usage		
8	PIN & Signature point-of-Sale (POS) transactions – free and unlimited (including cash back)	Unlimited	N/C	N/C	Per Usage		
9	Live customer service – free and unlimited	Unlimited	N/C	N/C	Per Usage		
10	Customer service via IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
11	Transaction denied at ATM or teller for insufficient funds – free and unlimited	Unlimited	N/C	N/C	Per Usage		
12	Transaction denied at POS – free and unlimited	Unlimited	N/C	N/C	Per Usage		
13	Balance inquiry at ATM, IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
14	Balance inquiry via IVR or internet – free and unlimited	Unlimited	N/C	N/C	Per Usage		
15	Monthly electronic or mailed account statements – free and unlimited	Unlimited	N/C	N/C	Per Usage		
16	Inactivity fee – free and unlimited	Unlimited	N/C	N/C	Per Usage		
17	Account Closure with check issued – free and unlimited	Unlimited	N/C	N/C	Per Usage		
B. Card Program Fees							
1	Load Fee		\$0.00	N/C	Per Load	3,000,000	\$0.00
C. Direct Deposit (ACH) Fees (Bank Account for UIA Only)							
1	ACH Fee (per transaction)		\$0.005	N/C	Per ACH	4,000,000	\$20,000.00
D. Additional Fees							
1	Charge for ACH Transfer		\$2.00	N/C	File	252	\$504.00
E. Notes/Comments							
1	Value Added optional service – Emergency Domestic Cash via Western Union; \$15.00 per request. The Contractor will only implement this value added service under the State’s direction.						
2	<ul style="list-style-type: none">\$150,000.00 for transition communications support. These funds are to be managed in partnership with the State. Examples of transition communications include, but not limited to:<ul style="list-style-type: none">Letter to all cardholders letting them know of the pending transitionPostcard to all cardholders as an activation reminderFollow-up letter to all cardholders reminding them of the card coming “next week”Website contentPosters for Michigan Unemployment offices						



- Brochures
- Email content, if appropriate

Note: The cost for the welcome custom card package that each recipient will receive from the Contractor will not be expended from these funds.

- **\$150,000.00 to be expensed under State direction in support of IT/conversion costs.**

At Contract signing, the Contractor will make a payment, as directed by the State, in the amount of \$150,000.00.

- **\$50,000.00 additional funds in year two for continued efforts needed in IT and/or conversion support.**

The Contractor will make a payment, as directed by the State, in the amount of \$50,000.00 at the first anniversary of the Contract.

- **\$50,000.00 bonus incentive for each year the Contractor holds both P-card and UIA contracts.**

The Contractor will make an annual payment, per the State's direction, in the amount of \$50,000.00 once the Contract has been executed. In addition, for each year the Contractor holds both the P-card and UIA contracts, the Contractor will make a \$50,000.00 payment to the State, as directed, upon Contract anniversary.

N/C = No Charge

***: If other State Agencies utilize this Contract, then Attachment B pricing will be used**



Exhibit 1 Security Requirements

On award of the Contract, the Contractor must comply with State and federal statutory and regulatory requirements, and rules; National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); all other industry specific standards; national security best practices and all requirements herein.

The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the CCI or designee in the form of a SSAE16 Type II report.

A. Governing Security Standards and Publications

The State of Michigan information is a valuable asset that must be protected from unauthorized disclosure, modification, use, or destruction. Prudent steps must be taken to ensure that its integrity, confidentiality, and availability are not compromised.

The Contractor must collect, process, store, and transfer Department of Treasury personal, confidential, or sensitive data in accordance with this Contract, State of Michigan policies and the laws of the State of Michigan and the United States, including, but is not limited to the following:

1. The Michigan Identity Theft Protection Act, MCL 445.61 et seq;
2. The Michigan Social Security Number Privacy Act, MCL 445.82 et seq.
3. Family Educational Rights and Privacy Act
4. State of Michigan Policies: The Contractor must comply with the State of Michigan information technology standards (<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>).

B. Security Risk Assessment

The Contractor must conduct assessments of risks and identify the damage that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the Department of Treasury. Security controls should be implemented based on the potential risks. The Contractor must ensure that reassessments occur whenever there are significant modifications to the information system and that risk assessment information is updated.

C. System Security Plan

The Contractor must develop and implement a security plan that provides an overview of the security requirements for the information system. If a security plan does not exist, the Contractor must provide a description of the security controls planned for meeting those requirements. The security plan must be reviewed periodically and revised to address system/organizational changes or problems.

D. Network Security

The Contractor is responsible for the security of and access to Department of Treasury data, consistent with legislative or administrative restrictions. Unsecured operating practices, which expose other connected networks to malicious security violations, are not acceptable. The Contractor must coordinate with the Michigan Department of Technology, Management and Budget to enter the proper pointers into the State of Michigan infrastructure.

E. Data Security

The Contractor has the responsibility to protect the confidentiality, integrity, and availability of State of Michigan data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as in electronic, paper or other physical form).

The Contractor must:

1. Process the personal data in accordance with the personal data protection laws of the State of Michigan and the United States.
2. Have in place appropriate technical and organizational internal and security controls to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. Technical and organizational security controls must be implemented that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, presented by the processing.



3. Provide secure and acceptable methods of transmitting personal, confidential or sensitive information over telecommunication devices such as data encryption (128 bit minimum), Secure Socket Layer (SSL), dedicated leased line or Virtual Private Network (VPN).
4. Supply the Department of Treasury, Privacy and Security Division with information associated with security audits performed in the last three years.
5. Have in place procedures so that any third party it authorizes to have access to the personal data, including processors, will respect and maintain the confidentiality, integrity, and availability of the data.
6. Process the personal, confidential, and sensitive data only for purposes described in the Contract.
7. Identify to the Department of Treasury a contact point within its organization authorized to respond to enquiries concerning processing of the personal, confidential, or sensitive data, and will cooperate in good faith with the Department.
8. Not disclose or transfer the personal, confidential, or sensitive data to a third party unless it is approved under this Contract.
9. Not use data transferred by the Department of Treasury as a result of this Contract for marketing purposes.

F. Media Protection

1. The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing Department of Treasury's personal, confidential, and sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system. This can include storage of information before it is input to the system and after it is output.
2. The Contractor must ensure that only authorized users have access to information in printed form or on digital media removed from the information system, physically control and securely store information media, both paper and digital, restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel.

G. Media Destruction and Disposal

1. The Contractor must sanitize or destroy information system digital media containing personal, confidential or sensitive information before its disposal or release for reuse to prevent unauthorized individuals from gaining access to and using information contained on the media.
2. Personal, confidential or sensitive information must be destroyed by burning, mulching, pulverizing or shredding. If shredded, strips should not be more than 5/16-inch, microfilm should be shredded to affect a 1/35-inch by 3/8-inch strip, and pulping should reduce material to particles of one inch or smaller.
3. Disk or tape media must be destroyed by overwriting all data tracks a minimum of three times or running a magnetic strip over and under entire area of disk at least three times. If the CD, DVD, or tape cannot be overwritten it must be destroyed in an obvious manner to prevent use in any disk drive unit and discarded. Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal. Electronic data residing on any computer systems must be purged based on retention periods required by the Department of Treasury.

H. Access Control

The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise. Access must be immediately removed when a staff changes job duties or leaves the employment.

Authentication Process

Authentication is the process of verifying the identity of a user. Authentication is performed by having the user enter a user name and password in order to access the system.

To help protect information from unauthorized access or disclosure, users must be identified and authenticated per



the table below prior to accessing confidential or sensitive information, initiating transactions, or activating services.

Publicly available information such as the mother's maiden name, birth date, and address as the sole authenticator is not a secure means of authentication and must not be used.

Automatic user logons are prohibited. Device-to-device logons must be secured (preferably using client certificates or password via tunneled session). For certain implementations, source restrictions (sign-on can occur only from a specific device) provide a compensating control, in addition to the ID and password.

Authentication information (e.g., a password or PIN) must never be disclosed to another user or shared among users.

The authentication process is limited to three unsuccessful attempts and must be reinstated by the authorized personnel (preferably the System security Administrator). User accounts should be systematically disabled after 90 days of inactivity and must be deleted after one year of inactivity

Password Requirements

The purpose of a password is to authenticate a user accessing the system and restrict use of a userID only to the assigned user. To the extent that the functionality is supported within the technology or product, the controls listed must be implemented.

These following controls or content rules apply at any point where a new password value is to be chosen or assigned. These rules must be enforced automatically as part of a new password content checking process:

Password Property	Value
Minimum Length	Eight characters with a combination of alpha, numeric and special characters
Composition	<ul style="list-style-type: none"> At least two numeric characters (0 through 9), neither of which may be at the beginning or the end of the password A combination of two upper (A through Z) and lower case (a through z) letters Special characters (!, @, #, \$, %, ^, &, *, (,), +, =, /, <, >, ?, ,, :, ;, \) UserID in password is not allowed
Expiration Requirement (Maximum Password Age):	30 days
Revocation	Passwords should be revoked after three failed attempts. (Treasury strongly supports password revocation after three failed attempts if system allows) Passwords should be systematically disabled after 90 days of inactivity to reduce the risk of compromise through guessing, password cracking or other attack and penetration methods.
Temporary passwords	<ul style="list-style-type: none"> Must be randomly chosen or generated System must force the user to change the temporary password at initial login
Change process	System must force user to: <ul style="list-style-type: none"> Confirm their current password/PIN, Reenter current password/PIN Create a new password/PIN Reenter new password/PIN System must prevent users from being able to consecutively change their password value in a single day (The goal is to prevent recycling through password history records to reuse an earlier-used password value)
Login process	Password/PIN must not appear on the screen during the login process (The exception to this is during selection of a machine-generated password).
Encryption of passwords/PINs	Passwords must be stored and transmitted with a minimum of 128-bit encryption. Passwords must be masked when entered on any screen



Compromise of password/PIN	Must be changed immediately
Forgotten password/PIN	Must be reset by authorized person (system Security Administrator)
Current user password/PIN	Must not be maintained or displayed in any readable format on the system
Audit logs	Maintain a record of when a password was changed, deleted, or revoked. The audit trail shall capture all unsuccessful login and authorization attempts for a one year period.
Password history	Keep a password history and perform a check against the history to verify the password has not been used for a minimum of one year
Privileged account access (e.g. supervisor or root)	Security administrator must change the password for that account immediately when user changes responsibilities

I. System Security Application Control

Application controls apply to individual computer systems and may include such controls as data origin, input controls, processing controls, output controls, application access controls, application interfaces, audit trail controls, and system documentation. Application controls consist of mechanisms in place over each separate computer system to ensure authorized data is processed completely, accurately, and reliably. The Contractor is responsible for ensuring application controls are in place and functioning properly within their organization. Ongoing testing and reporting of controls must be part of the business process in order to have a solid understanding of risks, strengths and weaknesses. A comprehensive solution is required to ensure that business critical applications are handled efficiently and are prioritized. Dynamic recovery procedures and fail over facilities must be incorporated into the scheduling process whenever possible; and where manual processes are needed, extensive tools must be available to minimize delays and ensure critical services are least impacted.

J. System Auditing

The Contractor must (i) create, protect, and retain information system audit log records to the extent needed to enable the monitoring, analysis, investigation, and reporting of unlawful, unauthorized, or inappropriate information system activity, and (ii) ensure that the actions of individual information system users can be uniquely traced to those users so they can be held accountable for their actions.

The Contractor must observe the following guidelines regarding system auditing:

1. Audit record must contain the following:
 - a. date and time of the event;
 - b. subject identity;
 - c. type of event;
 - d. how data changed;
 - e. where the event occurred; and
 - f. outcome of the event.
2. System alerts if audit log generation fails.
3. System protects audit information from unauthorized access.
4. Audit record must be reviewed by individuals with a "need to know" on a regular basis.
5. Audit logs are retained for sufficient period of time.

K. Configuration Control and Management

The configuration management policy and procedures must be consistent with applicable federal laws, directives, policies, regulations, standards, and guidance.

L. Incident Reporting

1. The Contractor must immediately notify any security incidents and/or breaches to the CCI [see Exhibit 2, Form 4621 "What is an Incident?" (brochure)].
2. The Contractor must have a documented and implemented Incident Response Policy and Procedure.



3. The Contractor must have an incident handling form for consistent, repeatable process for monitoring and reporting when dealing with incidents.
4. The Contractor must have an incident response resource identified to assist users in handling and reporting incidents.
5. Personnel must be trained in their incident response roles and responsibilities at least annually.
6. In the event of a security breach, the Contractor agrees to provide full cooperation to conduct a thorough security review in accordance with Section 2.092 State Data. The review will validate compliancy with federal and state laws and regulations.

M. Physical and Environmental Security

The Contractor must have established physical and environmental security controls to protect systems, the related supporting infrastructure and facilities against threats associated with their physical environment.

1. The Contractor must have established environmental protection for magnetic and other media from fire, temperature, liquids, magnetism, smoke, and dust.
2. The Contractor must control all physical access points to facilities containing information systems (except those areas within the facilities officially designated as publicly accessible), review physical security logs annually (at a minimum), investigate security violations or suspicious physical access activities, and initiate remedial actions.
3. The Contractor must review the established physical and environmental security controls annually (at a minimum) to ensure that they are working as intended.

N. Disaster Recovery and Business Continuity Plan

The Contractor must have developed, annually update, and regularly test disaster recovery and business continuity plans designed to ensure the availability of Department of Treasury's data in the event of an adverse impact to the Contractor's information systems due to a natural or man-made emergency or disaster event.

O. Security Awareness Training

The Contractor must ensure their staff having access to Treasury information are made aware of the security risks associated with their activities and of applicable laws, policies, and procedures related to security identified in Section A of this document (Exhibit 1), and must ensure that personnel are trained to carry out their assigned information security related duties.

Contracted employees must obtain Department of Treasury provided security awareness training (on-line training to be identified by the CCI).

P. Web Application Security

The Contractor must establish security controls for web application(s) to provide a high level of security to protect confidentiality and integrity of personal, confidential and sensitive data. The controls include, but are not limited to:

1. Secure coding guidelines to ensure that applications are not vulnerable to, at a minimum, the following:
 - Injection flaws, particularly SQL injection, OS command injection, LDAP and Xpath injections
 - Buffer overflow
 - Insecure cryptographic storage
 - Insecure communications
 - Improper error handling
 - Cross-site scripting (XSS)
 - Improper Access Control (such as insecure direct object references, failure to restrict URL access, and directory traversal)
 - Cross-site request forgery (CSRF)
2. Authentication;
3. Authorization and access control;
4. Web application and server configuration (e.g., patch management, deletion of unnecessary services, separation of the operating system and the web server);



5. Session management (e.g., randomly generate unique session IDs, encrypt sessions, enforce session expiration date, establish time-out setting for inactive session);
6. Input validation (e.g., avoid shell commands, system calls, and malicious codes);
7. Encryption (e.g., personal, confidential and sensitive data, encryption keys, passwords, shared secret);
 - a. The system must use SSL (128 bit or higher) for secure communication between the user's browser and the system. SSL will be utilized for:
 - i. Log-on process (authentication information -UserID and passwords)
 - ii. Specific field in the HTML forms and links (URLS) within the pages
 - iii. Cookies
 - iv. Session id
 - v. Confidential and sensitive data files
 - vi. Encryption keys, certificates, and passwords
 - vii. Audit log file
8. Audit logs (e.g., all authentication and authorization events, logging in, logging out, failed logins).



Exhibit 2 – What Is an Incident?

What is an Incident?
 What is a Security Breach?
 What must I do?
 How should it be handled?

What is an Incident?

An incident is any event threatening some aspects of physical or financial security, when financial resources or items valued at \$100.00 or more are missing or misused, any event violating confidentiality or privacy of information, where data is manipulated or missing, or any event involving unauthorized or unlawful activity.

Examples of Incidents:

- Missing computer equipment containing non-personal information.
- Missing briefcase that contains non-personal information.

Examples of Material Incidents:

- Missing laptop computer or other mobile device, portable media or paper records that do not contain Treasury personal information but do contain confidential or sensitive information.
- Missing warrant stock.

What Makes an Incident a Security Breach?

An incident becomes a security breach when an unauthorized person gains access to or acquires:

1. Unencrypted or unredacted (data not altered or truncated) personal information, or
2. The encryption key to an area storing personal information.

Beware: If personal information is discovered during the investigative process, an incident will become a potential security breach.

Examples of Potential/Actual Security Breach:

- Missing laptop computer or other mobile device, or portable media that contains Treasury personal information.
- Missing paper records that contain personal information.
- Accessing personal information when there is no business need for it.
- Using another individual's User ID and Password to access personal information.
- Stealing Treasury records that include personal information.
- Hacking into records containing Treasury personal information.
- Obtaining Treasury personal information from employees without proper authorization to access the information.
- Unauthorized and unescorted persons entering secure areas that house personal information.
- Theft of a server.

What is personal information?

The Identity Theft Protection Act, Public Act 452 of 2004, as amended, defines personal information as information containing the first name or initial of the first name and the last name **along with** one of the following:

1. Social Security number
2. Driver's License number or State Personal Identification card number
3. Account number; Credit or Debit Card number in combination with any required security code, access code or password that would permit access to a person's financial account.

Personal information may be in written or printed form or may reside electronically on devices or media such as mainframes, servers, personal computers (desktops and laptops), CDs, DVDs, tapes, flash drives, memory sticks, USB keys, microfiche, PDAs, Blackberrys, cell phones, or may exist on other state-of-the-art devices that have been or may be developed.

What should I do if my laptop is missing or if an incident is suspected?

Employee must:

1. File a report with local police immediately if asset valued at \$100.00 or more is missing.
2. Notify immediate supervisor no later than beginning of the next business day.
3. Complete Parts 1 and 2 of *Incident Report* (Form 4000*). This form is available on Treasury's Intranet.



4. Forward the Incident Report (with attached police report if applicable) to immediate supervisor and a copy to Treasury's Security Division.

Management Staff must:

1. Report the incident immediately through the chain of command to the Treasury Division Administrator and the Security Division, if unreported. If personal information is involved, follow the guidelines for Security Breach.

Exception: If another State agency/governmental entity, report incident to Treasury Disclosure Officer, Technical Services Division and the Security Division. If Contractor or vendor, report incident to CCI and Security Division.

2. The Division Administrator must notify the Bureau Director if it is a material incident or involves non- Treasury information.
3. The Bureau Director must notify the other entity immediately.
4. The Division Administrator must inform the Department of Information Technology (DIT) Agency Services (Treasury) Director right away if incident involves information technology resources.
5. Notify other Treasury divisions/offices that may be affected or should be involved with investigation.
6. The Disclosure Office must notify the IRS Office of Safeguards if Federal tax information is involved.
7. Investigate and resolve the incident.
8. Prepare the final form 4000 and submit it to Treasury's Security Division.

What should I do if I witness, discover, or am informed of a potential security breach?

Employee must:

1. Report the security breach immediately (no later than beginning of the next business day) to immediate supervisor.
2. Complete Parts 1 and 2 of Form 4000.
3. Forward the Incident Report (with attached police report if applicable) to immediate supervisor and a copy to Treasury's Security Division.

Management Staff must:

1. If the breach is ongoing, CONTAIN IT.
2. Report the potential breach immediately through the chain of command to the Bureau Director or Deputy Treasurer, whichever is applicable.
3. The Bureau Director or the Deputy Treasurer, whichever is applicable, must notify the Chief Deputy Treasurer immediately if a breach involving a database of personal information.
4. The Bureau Director must notify the other entity if the potential breach involves non-Treasury information.
5. The Division Administrator must inform the DIT Agency Services (Treasury) Director right away if incident involves information technology resources and personal information.
6. The Disclosure Office must notify the IRS Office of Safeguards if Federal tax information is involved.
7. Convene appropriate personnel so the scope of the breach can be determined and a plan for appropriate action can be agreed upon.

Note: If a database of personal information is involved, the Chief Deputy Treasurer must approve the Plan of Action.

8. If appropriate, issue breach notifications by telephone, in writing, on the Web or by email.
9. Notify the three major credit bureaus of the breach if more than 1,000 residents of the State of Michigan will receive or have received breach notifications.
10. Prepare the final form 4000 and submit it to Treasury's Security Division.

*Another entity may substitute its internal form for form 4000 if pertinent information is included. **Treasury must protect personal information against risks such as unauthorized access, modification or loss with reasonable security safeguards. Some safeguards are:**

- Do not store confidential, personal or sensitive Treasury information on mobile devices or portable media (including laptops, notebooks, memory sticks, CDs, DVDs, floppies) unencrypted:

ENCRYPT files or the full disk. (Refer to DIT Standard 1340, Storing and Managing Personal Identifying/Sensitive Information on Mobile Devices and Portable Media; also refer to Treasury Policy ET-03169 Data Security).

- Avoid sending or receiving unencrypted confidential, personal, or sensitive information via e-mail.
- Avoid sending confidential, personal, or sensitive information via fax.
- Secure confidential, personal, or sensitive papers on the fax, printer, or copy machines.
- Keep conversations at a volume level and/or in a location that will protect information.
- Back up data on a regular basis; make sure data files from an approved portable device are stored on the network server.
- Never store more data than needed.



- Shred documents with confidential, personal, or sensitive information (see Treasury Policy ET-03115 Confidential Information, Handle, and Discard).
- Have computers and hard drives properly wiped or overwritten when discarding or transferring (see DIT Procedure 1350.90, Secure Disposal of Installed and Removable Digital Media, and Treasury Policy ET-03169).
- Use a log-in password that is not easily guessed. Make it at least eight characters long, composed of upper- and lower-case letters, numbers and symbols such as “#” (see DIT Standard 1310.03, Active Directory Password, and Treasury Policy ET-03175 Passwords).
- Never set any log-in dialog box to remember your password (see Treasury Policy ET-03175 Passwords).
- Use a password-protected screen saver that comes on after a few minutes of inactivity. Initiate screen lock system (if a Treasury employee, press the key with Microsoft Windows logo and “L” on the keyboard) when you leave your office, even for a short period.
- Limit access to confidential, personal, or sensitive information to those who need to use it to perform their job duties (see DIT Policy 1335.00, Informative Access Control, and Treasury Policy ET-03164 Access Control).

See the following guidelines in the Security Guide for more information:

- ET-03180, Incident Reporting
- BT-03084, Security Breach Involving Personal Information
- PT-03253, Incident Reporting and Handling
- CT-03070, Incident/Security Breach Examples
- DIT Operating Procedure, How to Handle a Breach of Personal Identifiable/Sensitive Information Incidents Other References:
- BT-03049, Employee Conduct, General Guidelines
- ET-03140, Workplace Safety
- PT-03246, Potential Dangerous Taxpayer/Debtor, Report
- PT-03095, Theft or Irregularities in Public Funds/ Property or Violations of Departmental Policies and Procedures, Report and Investigate

Contact Information:

Contact Division/Bureau Security Liaison or the Security Division at (517) 636-4081 with any questions.



Exhibit 3 Safeguard Requirements of Confidential Data

This section sets forth the safeguard requirements for handling, storage, and processing of confidential tax information for a Contractor and their Subcontractor(s) and is incorporated as an integral part of the Contract. It will facilitate administration and enforcement of the laws of the State applicable to the State and in a manner consistent with the applicable statutes, regulations, published rules and procedures or written communication.

I. Authority

Authority for the Michigan Department of Treasury to require that this section be included in the Contract is contained in 1941 PA 122, as amended, MCL 205.28(1)(f), which states, in part, that subject to the same restrictions and penalties imposed upon department employees on the treatment of confidential information, a private contractor or its employees are strictly prohibited from disclosing taxpayer information to a third party. The prohibition against disclosure does not bar an employee of a private contractor with whom the State contracts that processes tax returns or payments pursuant to the Contract from having access to confidential information that is reasonably required for the processing or collection of amounts due this State.

II. Confidentiality

All information exchanged under this section must be kept confidential in accordance with the confidentiality provisions contained within section MCL 205.28(1)(f) and MCL 205.28(2) of the Michigan Department of Treasury Revenue Act, which state, in part;

“Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department will not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department.”

“A person who violates subsection (1)(e), (1)(f), or (4) is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than five years, or both, together with the costs of prosecution. In addition, if the offense is committed by an employee of this State, the person will be dismissed from office or discharged from employment upon conviction.”

All information obtained by either Treasury or Contractor will not be disclosed except as necessary for the proper administration of and execution of the Contract. In the event, confidentiality statutes are amended, the State will notify Contractor of any changes.

No employee, agent, authorized representative, or legal representative of Contractor will disclose any information obtained by virtue of this section to any other division within their company or any other governmental agency, department, or unit within such governmental agency, to any other state or nation, or unauthorized third party. No tax returns or tax information provide to the Contractor will be duplicated or disseminated within or outside the company without the written approval of the CCI. Michigan's tax returns and tax return information remain the property of the Department of Treasury.

Contractor may use a taxpayer's name, address, and Social Security number or employer identification number to the extent necessary in connection with the processing and mailing of forms for any report or return required in the administration of any tax in the performance of the Contract.

Information received by the Michigan Department of Treasury from the U.S. Internal Revenue Service, pursuant to section 6103(d) of the Internal Revenue Code or any other U.S. federal Agency will only be subject to the exchange if received as part of the State of Michigan tax return filing requirements

III. Procedure for Security

At a minimum, Contractor must safeguard any tax return information obtained under the Contract as follows:

- A. Access to the tax returns and tax return information will be allowed only to those authorized employees and Officials of Contractor who need the information to perform their official duties in connection with the uses of the information authorized in the Contract. The Contractor will be responsible for ensuring that each employee authorized to access Michigan tax information has signed Attachment C – Vendor, Contractor or Subcontractor Confidentiality Agreement (Form 3337) and provide a copy to the Department of Treasury, Disclosure Officer and CCI.



- B. Any records created from tax returns and tax return information must be stored in an area that is physically safe from access by unauthorized persons during duty hours, as well as non-duty hours or when not in use.
- C. All personnel who will have access to the tax returns and to any records created by the tax return information must be advised of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for noncompliance contained in MCL 205.28(1)(f) and (2).
- D. All confidential information, which includes, but is not limited to, data stored electronically and any related output and paper documents will be secured from unauthorized access and with access limited to designated personnel only. Michigan tax return information must not be commingled with other information. Further, when appropriate, Michigan tax return information must be marked as follows:

CONFIDENTIAL – MICHIGAN TAX RETURN INFORMATION

Protect at all times. Do not disclose.

**MI tax information is exempt from disclosure
under the Freedom of Information Act.**

- E. The records must be transported under appropriate safeguards as defined in the Contract.
- F. The Department of Treasury, Disclosure Officer or CCI may make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the Contractor.
- G. The Michigan Department of Treasury, Office of Privacy and Security, may monitor compliance of systems security requirements during the lifetime of the Contract.
- H. Contractor must also adopt policies and procedures to ensure that information contained in their respective records and obtained from Treasury and taxpayers will be used solely as provided in the Contract.

IV. Computer System Security of Tax Data

The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information, and unauthorized secondary uses.

Computer system security and physical security of tax data stored and processed by Contractor must be in compliance with the following security guidelines and standards established by the Michigan Department of Treasury as follows (these guidelines apply to any computer system developed by Contractor, either through its own systems staff, or through a contractor, subcontractor, or vendor):

A. Controlled Access Protection –Common Criteria (C2)

All computer systems processing, storing, and transmitting Michigan tax information must have computer access protection controls – (C2). These security standards are delineated in the “Common Criteria for Information Technology Security Evaluation” (CCITSE) at http://www.radium.ncsc.mil/tpep/library/ccitse/cc_over.html. To meet these standards, the operating security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation.

- 1) Security Policy – A security policy is a written document describing the system in terms of categories of data processed, users allowed access and access rules between the users and the data. Additionally, it describes procedures to prevent unauthorized access by clearing all protected information on objects before they are allocated or reallocated out of or into the system. Further protection must be provided where the computer system contains information for more than one program/project, office, or Agency and those personnel do not have authorization to see all information on the system.
- 2) Accountability – Computer systems processing Michigan tax information must be secured from unauthorized access. All security features must be available (audit trails, identification, and authentication) and activated to prevent unauthorized users from indiscriminately accessing Michigan tax information. Everyone who accesses computer systems containing Michigan tax information is accountable. Access controls must be maintained to ensure that unauthorized access does not go undetected. Computer programmers and contractors who have a need to access databases, and are authorized under the law, must be held accountable for the work performed on the system. The use of passwords and access control measures must be in place to identify who accessed protected information and limit that access to persons with a need to know.



a) On-line Access – Users must be limited to any Treasury on-line functions, by limiting access through functional processing controls and organization restrictions.

Any employee granted access privileges through the Contractor's Security Administrator will be approved for access and viewing rights to Treasury on-line systems by the Department of Treasury Disclosure Officer. The on-line access will be provided by Treasury's Office of Security.

b) Operating Features of System Security – Contractor must meet the following levels of protection with respect to tax return information. Individual user accountability must be ensured through user identification number and password.

- i. Access rights to confidential tax information must be secured through appropriate levels of authorization.
- ii. An audit trail must be maintained of accesses made to confidential information.
- iii. All confidential and protected information must be cleared from a system before it is used for other purposes not related to the enforcement, collection or exchange of data not covered by this section or by an addendum to this Contract.
- iv. Hard copies made of confidential tax return information must be labeled as confidential information.
- v. Confidential Treasury tax information must be blocked or coded as confidential on system.
- vi. Any computer system in which Michigan tax return information resides must systematically notify all users upon log-in of the following disclosure penalties for improperly accessing or making an authorized disclosure of Michigan tax return information:

NOTICE TO STATE AGENCY EMPLOYEES AND AUTHORIZED REPRESENTATIVES

This system contains Michigan Department of Treasury tax return information. **DO NOT DISCLOSE OR DISCUSS MICHIGAN RELATED TAX RETURN INFORMATION** with unauthorized individuals. The Michigan Department of Treasury Revenue Act, MCL 205.28(10)(f)(1), (2), prohibits such disclosure. A person making a willful unauthorized disclosure or inspection (browsing) of tax return information may be charged with the following Michigan penalties.

MICHIGAN PENALTIES

The Michigan Revenue Act imposes criminal penalties up to \$5,000.00 and/or imprisonment for five years, plus costs and dismissal from employment if it is found that an employee has made an unauthorized disclosure of a tax return or tax return information or divulged audit selection or processing parameters.

- 3) Assurance – Contractor must ensure that all access controls and other security features are implemented and are working when installed on their computer system. Significant enhancements or other changes to a security system must follow the process of review, independent testing, and installation assurance. The security system must be tested at least annually to assure it is functioning correctly. All anomalies must be corrected immediately.
 - a) The Contractor must initiate corrective action for all non-conformities as soon as detected and immediately advise the CCI. Notice of the corrective action must be provided to the CCI. All non-conformities must be reported to the CCI with the following:
 - a. Duration of non-conformity/interruption
 - b. Reason for non-conformity/interruption
 - c. Resolution.
 - b) All non-conformities to the specifications/tasks of the Contract must be corrected within four hours. The State recognizes there will be instances when adherence to this time frame will not be possible. However, the State will only tolerate this on an exception basis. To request an exception to this time frame, the Contractor must submit a detailed project plan to address the non-conformity within four hours to the CCI for approval.
- 4) Documentation – Design and test documentation must be readily available to the State. The developer or manufacturer should initially explain the security mechanisms, how they are implemented, and their adequacy (limitations). This information should be passed on to the security officer or supervisor. Test documentation should describe how and what mechanisms were tested and the results. If recognized organizations/tests/standards



are used, then a document to that effect will suffice. For example, a system that has been tested and certified as meeting certain criteria may have a document stating this fact, without detailed tests/results of information. Contractor, however, must ensure the documentation covers the exact system and that it includes the specific computer system used by Contractor.

Additionally, documentation must include a security administrator's guide. The security administrator's guide is addressed to the System's Administrator and Security Officer and must describe the protection mechanisms provided by the security system, guidelines on their use, and how they interact. This document must present cautions about security functions and describe privileges that should be controlled when running a secure system. The document must be secured and locked at all times with access rights only by the Systems Administrator and Security Officer.

Note: When a security system is designed or purchased for a specific computer or computer system, the security mechanisms must be reviewed by the State to ensure that needed security parameters are met. An independent test should be implemented on the specific computer or computer system to ensure that the security system meets the security parameters within this Contract and developed with the computer system. The test may be arranged by the developer, but must be done by an independent organization. Contractor must assign responsible individuals (Security Officers) with knowledge of information technology and applications to oversee the testing process. These individuals must be familiar with technical controls used to protect the system from unauthorized entry.

Finally, contingency and backup plans must be in place to ensure protection of Michigan tax information.

V. Electronic Transmission of Michigan Tax Information

The two acceptable methods of transmitting Michigan tax information over telecommunications devices are encryption and the use of guided media. Encryption involves the altering of data objects in a way that the objects become unreadable until deciphered. Guided media involves the use of protected microwave transmitting or the use of end to end fiber optics.

DTMB has defined encryption standards in DIT Technical Standards 1340.00.07 and 1345.00 which must be used to provide guidance for encryption, message authentication codes, or digital signatures and digital signatures with associated certification infrastructure.

Unencrypted, cable circuits of fiber optics are an alternative for transmitting Michigan tax information. Adequate measures complying with DIT Technical Standards 1340.00.04 and 1345.00.02 must be taken to ensure that circuits are maintained on cable and not converted to unencrypted radio transmission. Additional precautions must be taken to protect the cable, i.e., burying the cable underground or in walls or floors and providing access controls to cable vaults, rooms, and switching centers.

A. Remote Access

Accessing databases containing Michigan tax information from a remote location – that is, a location not directly connected to the Local Area Network (LAN) will require adequate safeguards complying with DIT Technical Standards 1340.00.11 and 1340.00.11.01 to prevent unauthorized entry.

For dial up access, the system must require an identification security card that requires both PIN and card in possession. According to DIT Technical Standards 1340.00.04 and 1345.00.02, dial in access into any connected State network will only be permitted after a dial-in user has been authenticated. Authentication is provided through ID and password.

B. Portable Computer Devices

Any entrusted confidential information collected or accessed during this Contract must be encrypted when stored on all storage devices and media. This includes, but not limited to, disk drives for servers, workstations, and portable memory media (PDAs, RAM drives, memory sticks, etc.).

VI. Record Keeping Requirements for Information Received in a Paper Format

Each Contractor employee requesting and receiving information must keep an accurate accounting of the information received. The audit trail will be required, which must include the following information:

- a. Taxpayer's name
- b. Identification number
- c. Information requested
- d. Purpose of disclosure request
- e. Date information received



- f. Name of Agency/Division and employee making request
- g. Name of other employees who may have had access
- h. Date destroyed
- i. Method of destruction

A. Electronic Media

Contractor must keep an inventory of magnetic and electronic media received under the Contract.

Contractor must ensure that the removal of tapes, disks, and paper documents containing Michigan tax return information from any storage area is properly recorded on charge-out records. Contractor is accountable for missing tapes, disks, and paper documents.

B. Recordkeeping Requirements of Disclosure Made to State or Federal Auditor General

When disclosures are made by Contractor to State or federal Auditors, these requirements pertain only in instances where the Auditor General's staff extracts Michigan tax returns or tax information for further review and inclusion in their work papers. Contractor must identify the hard copies of tax records or if the tax information is provided by magnetic tape format or through other electronic means, the identification must contain the approximate number of taxpayers' records, the date of inspection, the best possible description of the records, and the name of the Auditor(s) making the inspection.

VII. Contract Services

The following language must be included in any contract entered into by Contractor with a Subcontractor, if the Subcontractor will process Michigan tax return information provided under this Safeguard Provision.

- A. The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information, and unauthorized secondary uses.

B. Definition of Treasury Tax Return Information

Treasury tax return information is defined in RAB 1989-39 as follows:

Taxpayer's identity, address, the source or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments whether the taxpayer's return was, is being or will be examined or subject to their investigation or processing, or any other data, received by, recorded by, prepared by, furnished to or collected by the agency with respect to a return or with respect to the determination of the existence, or liability (or the amount thereof) of any person under the tax laws administered by the Department, or related statutes of the state for any tax, penalty, interest, fine, forfeiture, or other imposition or offense. The term "tax return information" also includes any and all account numbers assigned for identification purposes.

- C. An acknowledgment that a taxpayer has filed a return is known as a "fact of filing" and may not be disclosed. All tax return data made available in any format must be used only for the purpose of carrying out the provisions of the Contract between Contractor and the Subcontractor. Information contained in such material must be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract between Contractor and the Subcontractor. In addition, all related output will be given the same level of protection as required for the source material.
- D. The Subcontractor must certify that the data processed during the performance of the Contract between Contractor and the Subcontractor will be completely purged from all data storage components of the Subcontractor's computer facility, and no output will be retained by the Subcontractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Subcontractor must certify that any Michigan data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- E. Destruction of tax data, including any spoilage or any intermediate hard copy printout which may result during the processing of Michigan tax return information, must be documented with a statement containing the date of destruction, description of material destroyed, and the method used.
- F. Computer system security and physical security of tax data stored and processed by the Subcontractor must be in compliance with security guidelines and standards established by this Contract. See section VI. Record Keeping Requirements for Information Received in Paper Format for more details.



- G. The Contractor must ensure that each employee authorized to access Michigan tax information has signed the Vendor, Contractor or Subcontractor Confidentiality Agreement (Form 3337, see Attachment C) and provide a copy to the Department of Treasury, Office of Privacy and Security and the CCI.
- H. No work involving information furnished under the Contract between Contractor and a Subcontractor will be further subcontracted without the specific approval of DTMB. Contractor and approved Subcontractors handling Michigan tax return information will be required to sign the Vendor, Contractor or Subcontractor Confidentiality Agreement provided by Treasury, (Form 3337, see Attachment C). The original agreements must be returned to the Office of Privacy and Security for the Department of Treasury and a copy sent to the CCI.

VIII. Transport of Tax Information

In the event it is necessary to transport confidential tax return information, the Contractor is responsible for holding the carrier responsible for safeguarding the records. The Contractor must obtain a signed Vendor, Contractor, or Subcontractor Confidentiality Agreement (Form 3337, see Attachment C) for each carrier employee who has access to Michigan tax return information. The original agreements must be returned to the Department of Treasury, Office of Privacy and Security and a copy sent to the CCI.

If it is necessary to transfer records and responsibility for transport to a third carrier due to a mishap during transportation, the Contractor is responsible for ensuring safeguard standards remain enforce.

Any such incidents must be reported to the CCI immediately.

IX. Disposal of Tax Information

Materials furnished to Contractor, such as tax returns, remittance vouchers, W-2 reports, correspondence, computer printouts, carbon paper, notes, memorandums, and work papers must be destroyed by burning, mulching, pulverizing, or shredding. If shredded, strips must not be more than 5/16-inch, microfilm should be shredded to effect a 1/35-inch by 3/8-inch strip, and pulping must reduce material to particles of one inch or smaller.

Disk media must be destroyed by overwriting all data tracks a minimum of three times or running a magnetic strip over and under entire area of disk at least three times. If the CD or DVD cannot be overwritten, it must be destroyed in an obvious manner to prevent use in any disk drive unit and discarded. Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal. Electronic data residing on any computer systems must be purged based on Treasury's retention schedule.

Contractor and its Subcontractor(s) must retain all confidential tax information received by Treasury only for the period of time required for any processing relating to the official duties and then will destroy the records. Any confidential tax information that must be kept to meet evidentiary requirements must be kept in a secured, locked area and properly labeled as confidential return information. See Procedure for Security (Section V of this section) for more details.

X. Security Responsibility

Contractor must designate a security person who will ensure that each individual having access to confidential tax information or to any system which processes Michigan tax return information is appropriately screened, trained, and executes a Vendor, Contractor, or Subcontractor Confidentiality Agreement (Form 3337, see Attachment C) before gaining access or transaction rights to any process and computer system containing Treasury tax return information.

Each Contractor or their Subcontractor(s) employees' access and transaction rights must be reviewed periodically to ensure that there is a need to know Treasury tax return information displayed in any media.

Michigan tax return information will be made available only to individuals authorized by the Contract. State and Contractor will maintain a list of persons authorized to request and receive information and will update the list as necessary. A copy of the list must be furnished to the Michigan Department of Treasury Office of Privacy and Security and the CCI.



Commercial Prepaid Card Service Addendum

This Service Addendum is made between the State of Michigan ("Client") and Bank and, together with the Michigan Contract for Electronic Payment Card Services, Contract No. 071B4300059 (the "Contract") and the General Provisions between Client and Bank, forms the Agreement between the parties with respect to the Services defined below. Capitalized terms used and not defined in this Service Addendum have the meanings assigned in the General Provisions.

The accompanying List of Banks and Services includes the names of the Services currently offered by Bank which are covered by this Addendum. Bank may update the list from time to time. Client may contact its Bank representative at any time in order to receive an updated list.

1. Definitions

- (a) "Cardholder" means Client's employee or any other person who Client designates in writing to receive a Commercial Prepaid Card. If Client or a Cardholder makes a Commercial Prepaid Card available to another party, that person will also be considered a Cardholder.
- (b) "Commercial Prepaid Card" means a pre-paid magnetic strip-based plastic card issued by Bank for a Cardholder's purchase of goods or services or for cash withdrawals.
- (c) "Service" means the Commercial Prepaid Card Service, as more fully described in any applicable User Documentation, which allows Client to distribute Commercial Prepaid Cards to Cardholders that permit them access to a predetermined amount of funds. Commercial Prepaid Cards may be used at automated teller machines ("ATMs"), point-of-sale ("POS") terminals and for over-the-counter cash assess transactions at offices of financial institutions that accept Visa® cards.
- (d) "Transaction" means the purchase or reservation of goods or services or a cash advance made or facilitated by use of a Commercial Prepaid Card.
- (e) "User Documentation" means any written information Bank provides to Client, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service as provided by a particular branch or office. User Documentation may vary from one state to another. Current applicable User Documentation is available upon Client's request.

2. Commercial Prepaid Card Service

- (a) Bank will issue Commercial Prepaid Cards to Client on Client's request after Client has provided Bank such information regarding the Commercial Prepaid Card as Bank may require at that time. Before Bank issues each Commercial Prepaid Card, Bank will debit funds from a deposit account Client maintains with Bank for the value amount of the Commercial Prepaid Card issued.
- (b) Bank will mail the Commercial Prepaid Cards to the address or addresses Client provides Bank, together with a copy of the agreement between Bank and the Cardholder, Bank's privacy policy for consumers (if applicable) and instructions for activating the Commercial Prepaid Card.
- (c) Bank will deduct the amount of each Transaction, which may include fees added by the ATM owner or the applicable network, from the value amount with respect to the Commercial Prepaid Card. Bank will also deduct applicable Cardholder fees.
- (d) If Bank has agreed that a Commercial Prepaid Card is reloadable, Client may request Bank to add value to previously issued Commercial Prepaid Cards by providing such information as Bank may require at that time. Upon receipt of Client's request and the required information, Bank will debit Client's deposit account with Bank for the amount to be added to the existing Commercial Prepaid Cards.
- (e) If there are insufficient Collected and Available Funds in Client's account, Bank has no obligation to issue or activate any Commercial Prepaid Card or to add value to any existing Commercial Prepaid Card and may suspend or reverse any completed value load.

3. Commercial Prepaid Card Creation

All Commercial Prepaid Cards shall identify Bank as the issuer and shall include such other names and trademarks as Bank requires. If Client elects to customize the Commercial Prepaid Cards, Client will be responsible for any additional costs in the design or production of the Commercial Prepaid Cards. Client will provide graphics, promotional material and wording to Bank for review and approval and Client must comply with all the rules of Visa USA, Inc. and other systems or organizations, as applicable. Client will allow Bank to use Client's artwork on the Commercial Prepaid Cards, provided that Client shall have first reviewed and approved such use.

4. Commercial Prepaid Card Activation

Each Cardholder will be instructed to call a toll-free (in the U.S.A.) number and use an interactive voice response system to authenticate the Cardholder by using a number unique to the Cardholder in order to activate the Commercial Prepaid Card. During this call, the Cardholder will receive their PIN, if applicable. The Cardholder can change the PIN at that time



to any four digit number. Once the call is successfully completed, the Commercial Prepaid Card will be activated. Client will be responsible for informing each Cardholder of any other restrictions Client may impose on the use of the Commercial Prepaid Card, and Bank will not have any responsibility for enforcing those restrictions.

5. Commercial Prepaid Card Usage

Bank may refuse to issue or add value to any Commercial Prepaid Card if Bank believes the Commercial Prepaid Card will or may be used in violation, or may cause Bank to be in violation, of any law or regulation, or any rule of any payment system. Bank will notify Client of its decision to refuse to issue or add value to any Commercial Prepaid Card within 15 Business Days of such decision.

Bank will use reasonable efforts to prevent any overdraft with respect to a Commercial Prepaid Card or any unauthorized use of a Commercial Prepaid Card, but cannot ensure Bank will be able to do so.

6. Changes to Processing Instructions

Client may request Bank at any time to change the processing instructions for a Service by contacting its Bank representative. Bank will not be obligated to implement any requested changes until Bank has had a reasonable opportunity to act upon them. In making such changes, Bank is entitled to rely on requests purporting to be from Client, provided that such requests are made in accordance with the Bank's established, authenticated process. For certain changes, Bank may require that Client's requests be in writing, in a form and manner acceptable to Bank, or be from an authorized person designated by Client. In addition, certain requests may be subject to Bank's approval.

7. Reserved (Bank Agreement)



Treasury Services Agreement General Provisions

The State of Michigan ("Client") and Bank agree to these General Provisions ("General Provisions"). These General Provisions, together with the Michigan Contract for Electronic Payment Card Services, Contract No. 071B4300059 (the "Contract"), will govern Client's use of any of Bank's treasury services specified on the accompanying List of Banks and Services. Bank may update the list from time to time. Client may contact its Bank representative at any time in order to obtain an updated list. Additional terms and conditions for a particular Service are contained in any relevant Service Addendum.

1. Definitions

- a) "Agreement" means, with respect to a Service, these General Provisions together with the relevant Service Addendum for such Service, as each may be amended from time to time.
- b) "Account Agreement" means, with respect to each deposit, savings or current account for which Client is using a Service, the current signature card, International Account Agreement or SAOTC and the publication(s) provided by Bank containing terms and conditions applicable to such account, as such publication(s) may be amended from time to time.
- c) "Business Day" means each day on which the bank or bank office providing or facilitating a Service is open for business related to that Service.
- d) "Collected and Available Funds" means funds in an account equal to the ledger balance, minus float, if applicable, which, in Bank's reasonable determination, are not subject to a hold, dispute or legal process preventing their withdrawal.
- e) "Electronic Funds Transfer Services" means the Automated Clearing House (ACH) Services, International Electronic Funds Transfer Services and Wire Transfer Services specified on the accompanying List of Banks and Services.
- f) "International Account Agreement" means a form of Account Agreement used in some countries.
- g) "e-Statements" means statements with respect to which Client opts for electronic delivery and which are selected by Client as outlined in the applicable User Documentation.
- h) "SAOTC" means each form of Standard Account Opening Terms and Conditions used in certain countries as an Account Agreement.
- i) "Service" means, with respect to a treasury service, each service provided in a specific Bank location, identified in the List of Banks and Services and described in any relevant Service Addendum.
- j) "Service Addendum" means any addendum to these General Provisions which sets forth the specific terms relating to a Service.
- k) "Materials" means any software, user identification code, password, code, key, test key, security device, embedded algorithms, digital signatures and certificates, other similar devices and information, User Documentation and related documentation provided to Client by Bank in connection with a Service
- l) "Supplier" means any private or common carrier communication or transmission facility, any time-sharing supplier or any mail or courier service.
- m) "User Documentation" means any written information Bank provides to Client, including information in electronic format, as amended from time to time, which contains detailed instructions regarding the use of a Service, as provided by a particular banking center or office. User Documentation may vary from one jurisdiction to another. Current User Documentation is available upon Client's request.
- n) "Website" means any internet website and/or online access channel for use in accessing one or more Services.

2. Treasury Services

The Agreement becomes effective with respect to a Service when these General Provisions and any relevant Service Addendum have been executed by Client and Bank. Subject to the terms and conditions of the Contract and this Agreement, Bank will provide use of a Service when Bank has received all required and properly executed forms and Client has satisfactorily completed Bank's testing and training requirements, if any, in the use of the Service. To assist in Bank's establishment or maintenance of overdraft limits or other processing arrangements, Client shall provide Bank with such financial information as Bank reasonably requests. Client will use the Service in accordance with the Contract, these General Provisions, the relevant Service Addendum and any relevant User Documentation.

3. Payment Obligations

- a) Client must maintain and designate Bank account(s) which will be used for debiting or crediting with respect to all payments and deposits and related adjustments and charges.
- b) Except as otherwise provided, Client must have Collected and Available Funds on deposit in its account sufficient to cover such obligations under the Agreement. For purposes of satisfying Client's payment obligations, Bank may consider any overdraft line or credit arrangement Client has with Bank.
- c) Client will pay Bank for each Service in accordance with Bank's schedule of charges under the Contract, except as both parties agree otherwise (in writing) from time to time. Bank will, on a monthly basis, invoice Client's individual



agency for payment of charges due, unless Client arranges another payment procedure acceptable to Bank.

d) Reserved.

4. Reserved (Confidentiality)

5. Currency Exchange Rates

a) If a transaction involves a currency other than the currency in which the relevant account is denominated, Client's funds will be exchanged for such other currency at a current rate of exchange on or before the Transaction date, as the case may be, in accordance with Bank's normal procedures (including applicable User Documentation). If Bank assigns a currency exchange rate to Client's transaction, such exchange rate will be determined by Bank based upon market conditions. Bank may consider many factors in setting its exchange rates, including without limitation exchange rates charged by other parties, desired rates of return, market risk and credit risk. Client acknowledges that exchange rates for retail and commercial transactions, and for transactions effected after regular business hours and on weekends, are different from the exchange rates for large inter-bank transactions effected during the business day, as reported in The Wall Street Journal or elsewhere. Exchange rates offered by other dealers, or shown at other sources (including online sources) may be different from Bank's rates.

b) Bank does not accept any liability if Bank's rates are different from rates offered or reported by third parties, or offered by Bank at a different time, at a different location, for a different transaction amount, or involving a different Transaction media (banknotes, check, wire transfer, deposits etc.). Currency exchange rates fluctuate over time, and Client acknowledges and accepts the risks of such fluctuations: (i) in the case of Requests, between the time Client initiates a Request and the time the transfer is either completed or is unwound due to a cancellation, amendment, rejection or return, (ii) in the case of checks, between the time Client requests that Bank create a check and the time Bank debits Client's account to cover such check and/or the time Bank re-credits Client's account if the check is stopped in accordance with the applicable stop payment procedures, (iii) in the case of drafts, between the time Client prints a draft, or requests the Bank print a draft, and the time Bank transfers funds from Client's account to cover such draft, and (iv) in the case of deposits, between the time Client initiates such deposit and the time Bank confirms the rate to the Client.

c) Any Transaction which is returned to Bank will be charged back or credited back, as the case may be, at Bank's selling rate for the foreign currency on the day an item is received by Bank. Reclamation periods in foreign countries are not the same as those in North America and in most instances are of a longer duration.

6. Client's Representations and Warranties

Client represents and warrants to Bank on each day on which a Service is provided that (i) the Agreement constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations and the consummation of the transactions contemplated under the Agreement will not (A) constitute or result in a breach of its governing documents or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or order applicable to it; (iii) the debiting of any account as provided in the Agreement is not inconsistent with any restriction on the use of that account; (iv) all approvals and authorizations required to permit the execution, delivery, performance and consummation by Client of the Agreement and the transactions contemplated under the Agreement have been obtained, including but not limited to due authorization from each applicable third party to allow Client to transfer funds and access information from such party's account; (v) neither Client's performance of its obligations nor Client's use of any Service will facilitate illegal transactions, for example those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq., or otherwise violate any law, rule, regulation, judgment, decree or order applicable to Client; (vi) the Services Client receives pursuant to this Agreement are for business use only and are not primarily for personal, family or household use; and (vii) there is no lawsuit, tax claim or other dispute pending or threatened against Client which, if lost, would impair Client's financial condition or ability to pay Bank under the terms of this Agreement.

7. Limitation of Liability

a) Bank will not be responsible for the acts or omissions of Client or Client's officers, employees or agents (including but not limited to the amount, accuracy, timeliness of delivery or due authorization of any instructions from Client) or the acts or omissions of any other person or entity, including but not limited to any clearing house association or processor, any funds transfer system, any U.S. Federal Reserve Bank or any other country's central bank, any other financial institution or any Supplier, and no such person or entity will be deemed Bank's agent.

b) Bank will not be liable for and will be excused from any failure or delay in performing its obligations under the Agreement if (i) such failure or delay is caused by circumstances beyond Bank's reasonable control including any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute), legal constraint or governmental action or inaction, breakdown of any Supplier, equipment failure (including Internet failure) or act, omission, negligence or fault of Client or (ii) Bank reasonably believed that its action would have violated any law, guideline, rule, regulation or court order or decree of any governmental authority. No such failure or delay will constitute a breach of the Agreement.

**8. Reserved (Protection from Third Parties)****9. Suspension and Termination**

Subject to any transition responsibilities by the Contractor, under the Contract, if the Agreement or a Service is terminated for any reason, Client will (i) stop using any Materials relating to the terminated Service; (ii) erase or delete any Bank-provided software relating to the terminated Service to the extent stored in Client's computers; and (iii) at the option of Bank, either return to Bank or destroy all Materials relating to the terminated Service and certify to Bank that it has done so. Client's obligations under this subsection 8 will survive termination of the Agreement.

10. Overdrafts

With respect to a Service, Bank may, at its sole discretion, allow an overdraft to occur in Client's account. Except as Bank agrees or advises Client otherwise in writing, Client must repay Bank immediately, without demand, the amount of the overdraft plus any overdraft charges. In such cases, the fact that Bank previously allowed an overdraft to occur does not obligate Bank to do so in the future. Additional terms and conditions contained in the Account Agreement may also apply to such overdrafts.

11. Reserved (Communications)**12. E-Statements**

If Client uses a Website, Client will receive e-Statements electronically, unless Client opts out. If Client is not currently receiving e-Statements, Bank reserves the right to switch Client to receipt of e-Statements unless Client notifies Bank that Client wishes to opt out. Client may opt out by contacting Client's treasury services representative. Client agrees that this Agreement constitutes an agreement under the Uniform Electronic Transactions Act pursuant to applicable state law.

13. Reserved (Performance)**14. Advertising**

Neither Client nor Bank Will use the other party's name or refer to the other party directly or indirectly in any solicitation, marketing material, advertisement, news release or other release to any publication without receiving the other party's specific prior written approval for each such use or release, except that Bank may use Client's name as a reference in service proposals if it has obtained Client's prior written approval for such use.

15. Notices

Any written notice or other written communication to be given under the Agreement Will be addressed to each party at its address set forth in the Contract. Notices Will be effective upon receipt, except as otherwise provided in the Agreement.

16. Reserved (Facsimile Signatures)**17. Accessing Services via the Internet**

- a) Bank may make certain Services available via one or more Websites.
- b) Bank reserves the right to suspend Client's access to, and use of, a Website upon notice of a violation of any of the terms and conditions applicable to such access and use. In addition, Bank may suspend Client's access to, and/or use of, a Website immediately without notice where such action may be required to prevent interference with or disruption to services to other customers, to protect the integrity of Bank's systems, or as may be required by law or regulation.
- c) Websites will only be used for lawful purposes. Without limiting the foregoing, Client agrees not to use a Website in any way that would:
 - infringe any third party copyright, patent, trademark, service mark, trade secret or other proprietary rights or rights of publicity or privacy;
 - be fraudulent or involve the use of counterfeit or stolen items;
 - violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, unfair competition, anti-discrimination, defamation or false advertising) or any applicable foreign exchange controls;
 - violate any contractual provision by which Client is bound;
 - be false, misleading or inaccurate;
 - create liability for Bank or any service provider(s) or cause Bank to lose (in whole or in part) the services of any service provider;
 - be defamatory, trade libelous, unlawfully threatening or unlawfully harassing;
 - interfere with or disrupt computer networks connected to the network(s) used by Client; and/or



- interfere with or disrupt the use by any other customer of the Website and/or of any services accessed via the Website.

d) Violations of system and network security are prohibited, including but not limited to unauthorized access to, or use of, systems or data. Client agrees not to attempt to probe, scan or test the vulnerability of a system or to breach security or authentication measures or to seek to interfere with any system or network security. Bank will investigate violations of system and/or network security and may involve law enforcement if criminal conduct is suspected. Indirect or attempted violations of these terms and conditions by Client, and any actual or attempted violations by a third party on Client's behalf, shall be considered violations by Client.

e) Client agrees to follow all Bank's procedures and requirements with respect to security in accessing and using a Website and not to misrepresent Client's identity. Where passwords or other access information may be required, Client is solely responsible for the security of such access information and will hold Bank harmless from any unauthorized access to or use of systems that may result from Client's failure to properly maintain the security of such access information.

f) Client agrees to cooperate with Bank and any service provider(s) with regard to Client's access to, and use of, a Website, including providing such technical assistance and information as Bank may reasonably request.

g) Client agrees to access and use Websites only for the purpose intended and not for any purpose of commercial exploitation.

18. Reserved (Third Party Vendors)

19. Agreement

The Contract and this Agreement constitute and represents the entire agreement between Client and Bank regarding the Services Bank provides Client anywhere in the world and supersedes and extinguishes all prior agreements, understandings, representations, relevant User Documentation, any other document or written or oral statement (including but not limited to the Account Agreement except as applicable law requires otherwise),.

20. Reserved (Instructions)

21. Severability

If any provision of the Agreement or the application of any such provision to any person or set of circumstances is determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of the Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

22. Waiver

No delay or failure to exercise any right or remedy under the Agreement shall be deemed a waiver of such right or remedy. No waiver of a single breach or default under the Agreement shall be a waiver of any other breach or default. Any waiver under the Agreement must be in writing.

23. Reserved (Assignment)

24. Parties in Interest/Relationship

The Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The Agreement is not for the benefit of any other person, and no other person shall have any right under the Agreement against Client or Bank. Nothing contained in the Agreement will create any agency, fiduciary, joint venture or partnership relationship between Client and Bank.

25. Governing Law

With respect to each Service, this Agreement must be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with or pre-empted by federal law. Any dispute arising from this Agreement must be resolved in the Michigan Court of Claims. Bank consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Bank must appoint agents in Michigan to receive service of process.

26. Reserved (Dispute Resolution)

27. Reserved (Signature and Authority)



Attachment C – Vendor, Contractor, or Subcontractor Confidentiality Agreement

Michigan Department of Treasury
3337 (Rev. 01-12)

Vendor, Contractor or Subcontractor Confidentiality Agreement

The Revenue Act, Public Act 122 of 1941, MCL 205.28(1)(f), makes all information acquired in administering taxes confidential. The Act holds a vendor, contractor or subcontractor and their employees who sell a product or provide a service to the Michigan Department of Treasury, or who access Treasury data, to the strict confidentiality provisions of the Act. Confidential tax information includes, but is not limited to, information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the Michigan Department of Treasury for a tax administered by the department.

INSTRUCTIONS. Read this entire form before you sign it. If you do not complete this agreement, you will be denied access to Michigan Department of Treasury and federal tax information. After you and your witness sign and date this form, keep a copy for your records. Send the original to the address listed below.

Company Name and Address (Street or RR#, City, State, ZIP Code)		Last Name	First Name
		Driver License Number/Passport Number	Telephone Number
State of Michigan Department	Division	Subcontractor Name if Product/Service Furnished to Contractor	
Describe here or in a separate attachment the product or service being provided to the State of Michigan Agency (Required).			

Confidentiality Provisions. It is illegal to reveal or browse, except as authorized:

- All tax return information obtained in connection with the administration of a tax. This includes information from a tax return or audit and any information about the selection of a return for audit, assessment or collection, or parameters or tolerances for processing returns.
- All Michigan Department of Treasury or federal tax returns or tax return information made available, including information marked "Official Use Only". Tax returns or tax return information shall not be divulged or made known in any manner to any person except as may be needed to perform official duties. Access to Treasury or federal tax information, in paper or electronic form, is allowed on a **need-to-know** basis only. Before you disclose returns or return information to other employees in your organization, they must be authorized by Michigan Department of Treasury to receive the information to perform their official duties.
- Confidential information shall not be disclosed by a department employee to confirm information made public by another party or source which is part of any public record. 1999 AC, R 2005.1004(1).

Violating confidentiality laws is a felony, with penalties as described:

Michigan Penalties

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

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

Federal Penalties

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

In addition, inspecting, browsing or looking at a federal tax return or tax return information without authorization is a **felony violation** of IRC §7213A subjecting the violator to a **\$1,000 fine or imprisonment for one year, or both, plus prosecution costs**. Taxpayers affected by violations of §7213A must be notified by the government and may bring a civil action against the federal government and the violator within two years of the violation. Civil damages are the **greater of \$1,000 or actual damages** incurred by the taxpayer, plus the costs associated with bringing the action, 26 USC 7431.

Failure to comply with this confidentiality agreement may jeopardize your employer's contract with the Michigan Department of Treasury.

Certification		
By signing this Agreement, I certify that I have read the above confidentiality provisions and understand that failure to comply is a felony.		
Print name of employee signing this agreement	Signature of person named above	Date signed
Print Witness Name (Required)	Signature of Witness (Required)	Date signed



Submit your form to the following address:

Office of Privacy and Security/ Disclosure Unit
Michigan Department of Treasury
430 W. Allegan Street
Lansing, MI 48922

Questions, contact the **Office of Privacy and Security** by telephone, (517) 636-4239; fax, (517) 636-5340; or email:

Treas_Disclosure@michigan.gov