

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

January 3, 2012

CHANGE NOTICE NO. 5
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467 nancy.p.cournaya@baml.com		TELEPHONE (312) 992-6295 Nancy Cournaya
		BUYER/CA (517) 373-0325 Angela Buren
Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services – Statewide		
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2013		
TERMS Net 45	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, Schedule B – Electronic Product Fee Schedule is DELETED in its entirety and replaced by the attached Amended Schedule B.

Additionally, effective October 3, 2011, Attachment A – Rebate Pricing is DELETED in its entirety and replaced by the attached Amended Attachment A.

Effective June 30, 2012, this Contract is hereby EXTENDED through June 30, 2013.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request, Contractor concurrence, and DTMB/Procurement approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

Contract No. 071B9200109
Change Notice No. 5
Signature Block

FOR THE CONTRACTOR:

Bank of America

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB-Procurement

Division

Date

ADDENDUM TO BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT

THIS ADDENDUM (the Addendum") is dated October 3, 2010 by and between the State of Michigan and FIA Card Services, N.A., a Bank of America company ("Bank of America") and amends the Bank of America Corporate Purchasing Card Agreement between the parties dated December 17, 2008. (the "Agreement").

WHEREAS, the parties desire to add to and modify certain terms of the Agreement;

NOW, THEREFORE, for valuable consideration, the parties hereby agree as follows:

1. DEFINITIONS

Terms capitalized herein and not otherwise defined shall be given the meaning ascribed to them in the Agreement.

2. AMENDMENTS

Schedule B. Electronic Product Fee Schedule. Schedule B in Attachment B to State of Michigan Contract No. 071B9200109 is deleted in its entirety and replaced by the attached Amended Schedule B.

Attachment A rebate pricing is deleted in its entirety and replaced by the attached Amended Attachment A dated October 3, 2011.

3. RATIFICATION

All of the terms of the Agreement not expressly modified herein shall continue in full force and effect and are hereby ratified by the parties hereto.

**AMENDED ATTACHMENT A dated October 3, 2011
TO
BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT
(Cycle and Grace Days)**

REBATE DEFINITIONS:

Capitalized terms, which are not defined in this Attachment A have the meaning ascribed in Article 1, and/or Article 2, Attachment B (including Addendum) to which this Attachment A is attached.

"Calculation Period" means, initially, the 12-month period commencing sixty (60) days after Bank of America receives a fully executed original of this Agreement and thereafter, each subsequent 12-month period.

"Cycle Days" means the number of days from the start of the billing period to the statement date.

"Grace Days" means the number of days from the statement date that payment is due.

"Large Ticket Interchange Transactions" means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

"Rebate Multiplier" means the multiplier corresponding to the Standard Transaction Volume and Cycle and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table, and the multiplier corresponding to the Large Ticket Interchange Transaction Volume and Cycle and Grace Days set forth in the Large Ticket Interchange Transactions Rebate Multiplier Table below.

"Standard Transactions" means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

"Total Credit Losses" means, for any Calculation Period, the sum of (i) Bank of America's credit losses on the Accounts for the Calculation Period and (ii) Bank of America's credit losses on the Accounts for any previous Calculation Period which have not been applied against any rebate payable under this Agreement.

"Transaction Volume" means, for any Calculation Period, the total dollar amount of purchase transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume.

REBATE CONDITIONS:

The program must meet the following conditions in order to qualify for a rebate:

- (i) During the Calculation Period, Company and Participant pay Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date;
- (ii) Neither Company nor Participant has breached any obligation, covenant, representation or warranty contained in this Agreement;
- (iii) For the Calculation Period, and Transaction Volume is at least \$1,000,000.00.

REBATE CALCULATION AND PAYMENT:

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, Bank of America shall pay a rebate to Company, which shall be calculated at the end of the Calculation Period in accordance with the respective Multiplier Tables for Standard and Large Ticket Interchange Transactions and using the following equation. For the avoidance of doubt the Multiplier Tables below will be applied to Transaction Volumes commencing October 1, 2011 and going forward.

$$\text{(Transaction Volume for Standard Transactions x Rebate Multiplier)} + \text{(Transaction Volume for Large Ticket Interchange Transactions x Rebate Multiplier)} - \text{Total Credit Losses}$$

Payment of any rebate shall be made by ACH credit or other means determined by Bank of America, within 90 days following the end of the Calculation Period. No rebate shall be paid to any Participant.

Should one or more of the above Rebate Conditions not be met, Bank of America shall be under no obligation to pay any rebate, although Bank of America may, in its sole discretion, determine to pay a rebate in an amount determined by Bank of America. Bank of America's payment of a rebate in such circumstance shall in no way obligate Bank of America to pay a rebate with respect to any subsequent Calculation Period.

STANDARD TRANSACTIONS REBATE MULTIPLIER TABLE

State of Michigan (10/3/11)		Cycle days	14	14	30	30	30	30	30
			Grace days	3	7	3	7	14	20
Annual USD Card Volume Tiers		REBATE BASIS POINTS							
Excludes Large Ticket									
\$1,000,000	\$1,999,999		110	106	102	98	91	85	80
\$2,000,000	\$2,999,999		130	126	122	118	111	105	100
\$3,000,000	\$4,999,999		140	136	132	128	121	115	110
\$5,000,000	\$9,999,999		150	146	142	138	131	125	120
\$10,000,000	\$14,999,999		151	147	143	139	132	126	121
\$15,000,000	\$19,999,999		152	148	144	140	133	127	122
\$20,000,000	\$34,999,999		153	149	145	141	134	128	123
\$35,000,000	\$49,999,999		154	150	146	142	135	129	124
\$50,000,000	\$74,999,999		155	151	147	143	136	130	125
\$75,000,000	\$79,999,999		156	152	148	144	137	131	126
\$80,000,000	\$84,999,999		157	153	149	145	138	132	127
\$85,000,000	\$89,999,999		158	154	150	146	139	133	128
\$90,000,000	\$94,999,999		159	155	151	147	140	134	129
\$95,000,000	\$99,999,999		160	156	152	148	141	135	130
\$100,000,000	\$104,999,999		161	157	153	149	142	136	131
\$105,000,000	\$109,999,999		162	158	154	150	143	137	132
\$110,000,000	\$114,999,999		163	159	155	151	144	138	133
\$115,000,000	\$119,999,999		164	160	156	152	145	139	134
\$120,000,000	\$124,999,999		165	161	157	153	146	140	135
\$125,000,000	\$129,999,999		166	162	158	154	147	141	136
\$130,000,000	\$139,999,999		167	163	159	155	148	142	137
\$140,000,000	\$149,999,999		168	164	160	156	149	143	138
\$150,000,000	\$159,999,999		169	165	161	157	150	144	139
\$160,000,000	\$169,999,999		170	166	162	158	151	145	140
\$170,000,000	\$179,999,999		171	167	163	159	152	146	141
\$180,000,000	\$189,999,999		172	168	164	160	153	147	142
\$190,000,000	\$199,999,999		173	169	165	161	154	148	143
\$200,000,000	\$224,999,999		174	170	166	162	155	149	144
\$225,000,000	\$249,999,999		175	171	167	163	156	150	145
\$250,000,000	\$274,999,999		176	172	168	164	157	151	146
\$275,000,000	\$299,999,999		177	173	169	165	158	152	147
\$300,000,000	+		178	174	170	166	159	153	148

LARGE TICKET INTERCHANGE TRANSACTIONS REBATE MULTIPLIER

Large Ticket Interchange Qualified Transactions Annual Volume		Cycle Days	14	14	30	30	30	30	30
			Grace Days	3	7	3	7	14	20
		REBATE BASIS POINTS							
\$0	\$1,499,999		39	35	31	27	20	15	10
\$1,500,000	\$4,999,999		49	45	41	37	30	25	20
\$5,000,000	\$19,999,999		59	55	51	47	40	35	30
\$20,000,000	+		64	60	56	52	45	40	35

Notwithstanding anything to the contrary in the Agreement or this Schedule of Fees and Charges, all fees and charges are subject to change upon 30 days prior written notice to you if an event external to Bank of America increases the cost or decreases the revenue to Bank of America (e.g., decreases to interchange revenue paid to Bank of America by a card association, increases to funding costs due to interest rate changes or deterioration in your financial condition) in connection with providing this card program to you.

**AMENDED SCHEDULE B
TO
BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT
ELECTRONIC PRODUCT FEE SCHEDULE**

Internet Application Options:		
Works Solution		No fee
Visa Information Management (VIM) Reporting		N/A
VIM with Workflow		N/A
Custom Interface:		
<i>Interface warranty period of 1 year</i>		
Development		\$0
Maintenance		\$0
Standard Electronic File Delivery Options:		
EDI 811		\$0
Statement Billing File		\$0
File Express (MasterCard only)		N/A
Works Receipts Imaging:		
Pricing Schedule		
	# of Open Accts	Receipt Imaging
Tier 1	1-50	\$50
Tier 2	51-100	\$100
Tier 3	101-200	\$200
Tier 4	201-350	\$350
Tier 5	351-700	\$700
Tier 6	701-1,500	\$1,500
Tier 7	1,501-3,000	\$3,000
Tier 8	3,001-5,000	\$5,000
Tier 9	5,001-10,000	\$10,000
		➤ Client will be charged monthly at the corporate account level

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

May 2, 2011

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (312) 992-6295 Nancy Cournaya
Bank of America 231 S. LaSalle St. Chicago, IL 60467 nancy.p.cournaya@baml.com		
		BUYER/CA (517) 373-0325 Angela Buren
Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services – Statewide		
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012		
TERMS	Net 45	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, the attached “Addendum to Bank of America Corporate Purchasing Card Agreement” and “Schedule A - Amended” language is hereby INCORPORATED into this Contract (see attachments).

NOTE: The DTMB Buyer for this Contract is changed to Angela Buren (517) 373-0325.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request, Contractor concurrence, and DTMB/Purchasing Operations’ approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

ADDENDUM TO BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT

THIS ADDENDUM (the "Addendum") is dated October 22, 2010 by and between the State of Michigan and FIA Card Services, N.A., a Bank of America company ("Bank of America") and amends the Bank of America Corporate Purchasing Card Agreement between the parties dated December 17, 2008. (the "Agreement").

WHEREAS, the parties desire to add to and modify certain terms of the Agreement;

NOW, THEREFORE, for valuable consideration, the parties hereby agree as follows:

1. DEFINITIONS

Terms capitalized herein and not otherwise defined shall be given the meaning ascribed to them in the Agreement.

2. AMENDMENTS

Schedule A. General Product Fee Schedule. State of Michigan Travel, a separate sub company of the State of Michigan, will be subject to the fees for Individual Bill Accounts. Schedule A in Attachment A to State of Michigan Contract No. 071B9200109 is deleted in its entirety and replaced by the attached amended Schedule A.

Schedule C rebate – The State of Michigan Senate, a separate sub company of the State of Michigan, will be excluded from the Purchasing Card rebate, and this company's volume will not be part of the State of Michigan's card volume calculation.

3. RATIFICATION

All of the terms of the Agreement not expressly modified herein shall continue in full force and effect and are hereby ratified by the parties hereto.

**SCHEDULE A - AMENDED
TO
BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT**

GENERAL PRODUCT FEE SCHEDULE

Payment Method and applicable fee:	➤ Electronic Payment – No Fee
Annual Card Fee (Per Card):	➤ Fee Waived
Late Fee: <i>(An account is assessed a fee three (3) days after due date. The fee will be assessed when the account is past due 01-30 days)</i> <u>Central Bill Accounts:</u> Minimum \$250.00, Maximum \$3,500.00 <u>Individual Bill Accounts:</u>	➤ Not to exceed State of Michigan Law ➤ \$29.00 per occurrence (no min/no max)
Late Fee Assessment	➤ Assessed 3 days after DUE date
Periodic Finance Charge: <i>(Finance charges accrue on all balances that are 31-60 days past due)</i> <u>Central Bill Accounts:</u> <u>Individual Bill Accounts:</u>	➤ Not to exceed State of Michigan Law ➤ Prime Rate + 3%
Cash Advance Fee: Minimum \$5.00, no maximum	➤ 2.00% of transaction amount
Overlimit Fee: <u>Central Bill Accounts:</u> Assessed when Aggregate Charge Limit is exceeded. <u>Individual Bill Accounts:</u> Assessed when any Card Limit is exceeded.	➤ Fee Waived ➤ Fee Waived
Returned Payment Fee:	\$29.00 per occurrence
Copy Fee:	\$3.00 per copy
Logo Fee:	➤ Logo Card Fee Waived ➤
Unique Card Design Fee:	➤ Custom Card Not Selected
International Transaction Fee:	1% of the U.S. Dollar amount

SELECTION OF SETTLEMENT PERIOD

Indicate the Settlement Period or number of days after the statement closing date within which payment is due.

➤ 14 day cycle/ 7 day grace period

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

February 17, 2010

CHANGE NOTICE NO. 3 (REVISED)
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467	TELEPHONE (989) 790-8349 Joseph Kiss
	BUYER/CA (517) 241-0684 Brian Kloeckner
	Joseph.kiss@bankofamerican.com
Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services – Statewide	
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012	
TERMS Net 45	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, the MiDeal language regarding the State Administrative Fee is REMOVED from this Contract.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

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

January 4, 2010

CHANGE NOTICE NO. 3
 TO
 CONTRACT NO. 071B9200109
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (989) 790-8349
Bank of America 231 S. LaSalle St. Chicago, IL 60467 Joseph.kiss@bankofamerican.com		Joseph Kiss
		BUYER/CA (517) 241-0684 Brian Kloeckner
Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services – Statewide		
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012		
TERMS	Net 45	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, the following MiDeal language is now a part of this Contract:

State Administrative Fee

The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals one percent of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.

The Contractor must pay the Administrative Fee by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: *Applicable State BPO Number, report amount(s), and reporting period covered.*

Contractor must forward the check to the following address:

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

Please make check payable to: State of Michigan

**CONTRACT #071B9200109
CHANGE NOTICE #3
PAGE TWO**

2.281 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/mideal>. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under the Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

Additionally, the attached revised Attachment A, Schedule A, Schedule B, and Attachment B are hereby incorporated into this Contract.

NOTE: The DMB Buyer for this Contract is now Brian Kloeckner (517) 241-0684.

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per Agency/Contractor agreement and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

**AMENDED Attachment A
TO
BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT
(Cycle and Grace Days)**

REBATE DEFINITIONS:

Capitalized terms, which are not defined in this Attachment A have the meaning ascribed in Article 1, and/or Article 2, Attachment B (including Addendum) to which this Attachment A is attached.

"Calculation Period" means, initially, the 12-month period commencing sixty (60) days after Bank of America receives a fully executed original of this Agreement and thereafter, each subsequent 12-month period.

"Cycle Days" means the number of days from the start of the billing period to the statement date.

"Grace Days" means the number of days from the statement date that payment is due.

"Large Ticket Interchange Transactions" means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

"Rebate Multiplier" means the multiplier corresponding to the Standard Transaction Volume and Cycle and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table, and the multiplier corresponding to the Large Ticket Interchange Transaction Volume and Cycle and Grace Days set forth in the Large Ticket Interchange Transactions Rebate Multiplier Table below.

"Standard Transactions" means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

"Total Credit Losses" means, for any Calculation Period, the sum of (i) Bank of America's credit losses on the Accounts for the Calculation Period and (ii) Bank of America's credit losses on the Accounts for any previous Calculation Period which have not been applied against any rebate payable under this Agreement.

"Transaction Volume" means, for any Calculation Period, the total dollar amount of purchase transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume.

REBATE CONDITIONS:

The program must meet the following conditions in order to qualify for a rebate:

- (i) During the Calculation Period, Company and Participant pay Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date;
- (ii) Neither Company nor Participant has breached any obligation, covenant, representation or warranty contained in this Agreement;
- (iii) For the Calculation Period, and Transaction Volume is at least \$1,000,000.00.

REBATE CALCULATION AND PAYMENT:

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, Bank of America shall pay a rebate to Company, which shall be calculated at the end of the Calculation Period in accordance with the respective Multiplier Tables for Standard and Large Ticket Interchange Transactions and using the following equation:

$$\text{(Transaction Volume for Standard Transactions x Rebate Multiplier) + (Transaction Volume for Large Ticket Interchange Transactions x Rebate Multiplier) – Total Credit Losses}$$

Payment of any rebate shall be made by ACH credit or other means determined by Bank of America, within 90 days following the end of the Calculation Period. No rebate shall be paid to any Participant.

Should one or more of the above Rebate Conditions not be met, Bank of America shall be under no obligation to pay any rebate, although Bank of America may, in its sole discretion, determine to pay a rebate in an amount determined by Bank of America. Bank of America's payment of a rebate in such circumstance shall in no way obligate Bank of America to pay a rebate with respect to any subsequent Calculation Period.

STANDARD TRANSACTIONS REBATE MULTIPLIER TABLE

State of Michigan 09/11/09 Annual Card Volume Tiers Excludes Large Ticket		Cycle days	14	14	30	30	30	30	30
			3	7	3	7	14	20	25
		Grace days	REBATE BASIS POINTS						
\$1,000,000	\$4,999,999		92	88	85	81	74	67	62
\$5,000,000	\$9,999,999		102	98	95	91	84	77	72
\$10,000,000	\$14,999,999		112	108	105	101	94	87	82
\$15,000,000	\$19,999,999		117	113	110	106	99	92	87
\$20,000,000	\$24,999,999		122	118	115	111	104	97	92
\$25,000,000	\$29,999,999		135	131	128	124	117	110	105
\$30,000,000	\$34,999,999		136	132	129	125	118	111	106
\$35,000,000	\$39,999,999		136.5	132.5	129.5	125.5	118.5	111.5	106.5
\$40,000,000	\$44,999,999		137	133	130	126	119	112	107
\$45,000,000	\$49,999,999		137.5	133.5	130.5	126.5	119.5	112.5	107.5
\$50,000,000	\$54,999,999		138	134	131	127	120	113	108
\$55,000,000	\$59,999,999		138.5	134.5	131.5	127.5	120.5	113.5	108.5
\$60,000,000	\$64,999,999		139	135	132	128	121	114	109
\$65,000,000	\$69,999,999		139.5	135.5	132.5	128.5	121.5	114.5	109.5
\$70,000,000	\$74,999,999		140	136	133	129	122	115	110
\$75,000,000	\$79,999,999		140.25	136.25	133.25	129.25	122.25	115.25	110.25
\$80,000,000	\$84,999,999		140.5	136.5	133.5	129.5	122.5	115.5	110.5
\$85,000,000	\$89,999,999		140.75	136.75	133.75	129.75	122.75	115.75	110.75
\$90,000,000	\$94,999,999		141	137	134	130	123	116	111
\$95,000,000	\$99,999,999	141.25	137.25	134.25	130.25	123.25	116.25	111.25	
\$100,000,000	\$104,999,999	141.5	137.5	134.5	130.5	123.5	116.5	111.5	
\$105,000,000	\$109,999,999	141.75	137.75	134.75	130.75	123.75	116.75	111.75	
\$110,000,000	\$114,999,999	142	138	135	131	124	117	112	

\$115,000,000	\$119,999,999		142.5	138.5	135.5	131.5	124.5	117.5	112.5
\$120,000,000	\$129,999,999		143	139	136	132	125	118	113
\$130,000,000	\$139,999,999		144	140	137	133	126	119	114
\$140,000,000	\$149,999,999		145	141	138	134	127	120	115
\$150,000,000	\$159,999,999		146	142	139	135	128	121	116
\$160,000,000	\$169,999,999		147	143	140	136	129	122	117
\$170,000,000	\$179,999,999		148	144	141	137	130	123	118
\$180,000,000	\$189,999,999		149	145	142	138	131	124	119
\$190,000,000	\$199,999,999		150	146	143	139	132	125	120
\$200,000,000	\$209,999,999		151	147	144	140	133	126	121
\$210,000,000	\$219,999,999		152	148	145	141	134	127	122
\$220,000,000	\$229,999,999		153	149	146	142	135	128	123
\$230,000,000	\$239,999,999		154	150	147	143	136	129	124
\$240,000,000	\$299,999,999		155	151	148	144	137	130	125
\$300,000,000	+	-	156	152	149	145	138	131	126

LARGE TICKET INTERCHANGE TRANSACTIONS REBATE MULTIPLIER

Large Ticket Interchange Qualified Transactions Annual Volume		Cycle Days	14	14	30	30	30	30	30
			3	7	3	7	14	20	25
			REBATE BASIS POINTS						
\$0	\$1,499,999		39	35	31	27	20	15	10
\$1,500,000	\$4,999,999		49	45	41	37	30	25	20
\$5,000,000	\$19,999,999		59	55	51	47	40	35	30
\$20,000,000	+		64	60	56	52	45	40	35

Bank of America is has enhanced the financial rebate offering with additional program incentive funds. Bonus incentives are in addition to the rebate offered above, and are intended to award achievement of volume goals. This bonus incentive is based on a 3-year commitment on the Bank of America Card program.

1) Bonus Incentive

Bank of America is will pay a bonus incentive of \$200,000.00 within 60 days of implementation of the Bank of America Card program. This bonus is in addition to the rebates noted above. This bonus incentive is contingent on year one transaction volume of \$30million. If the program fails to achieve the year 1 transaction volume requirement, then Company will pay back to Bank of America a proportional amount of the signing bonus incentive. For example, if Year 1 is 10% below the target transaction volume, then 10% of the bonus incentive will be repaid to Bank of America at the end of the first annual calculation period.

If Company terminates, or if the Bank terminates for cause, the program prior to completion of the 3-year Contract, a pro rated share of the bonus incentive must be repaid by the Company to the Bank within 45 days after said termination. Pro ration will occurs as follows: Company may retain 33%of the financial incentive paid to it for each completed year of said 3-year pricing term and must repay the balance to the Bank.

**SCHEDULE A
TO
BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT**

GENERAL PRODUCT FEE SCHEDULE

Payment Method and applicable fee:	➤ Electronic Payment – No Fee ➤
Annual Card Fee (Per Card):	➤ Fee Waived ➤
Late Fee: Assessed if full payment is not received by Payment Due Date. <i>Central Bill Accounts: Minimum \$250.00, Maximum \$3,500.00</i> <u>Individual Bill Accounts:</u>	➤ Not to exceed State of Michigan Law ➤ Not to exceed State of Michigan Law
Periodic Finance Charge:	➤ Not to exceed State of Michigan Law
Cash Advance Fee: Minimum \$5.00, no maximum	➤ 2.00% of transaction amount
Overlimit Fee: <i>Central Bill Accounts: Assessed when Aggregate Charge Limit is exceeded.</i> <u>Individual Bill Accounts:</u> Assessed when any Card Limit is exceeded.	➤ Fee Waived ➤ Fee Waived
Returned Payment Fee:	\$29.00 per occurrence
Copy Fee:	\$3.00 per copy
Logo Fee:	➤ Logo Card Fee Waived ➤
Unique Card Design Fee:	➤ Custom Card Not Selected
International Transaction Fee:	1% of the U.S. Dollar amount

SELECTION OF SETTLEMENT PERIOD

Indicate the Settlement Period or number of days after the statement closing date within which payment is due.

➤ __14__ day cycle/ __7__ day grace period

Attachment B

BANK OF AMERICA CORPORATE PURCHASING CARD AGREEMENT

This Bank of America Corporate Purchasing Card Agreement (the "Agreement") is made by and between FIA Card Services, N.A., a national banking association, ("Bank of America"), and State of Michigan ("Company") and shall be effective as of the Effective Date set forth below.

Recitals

A. Bank of America is a member of MasterCard® International Incorporated ("MasterCard") and Visa® U.S.A. Inc. ("Visa") with full power and authority to issue cards for business and commercial use;

B. Bank of America issues and services corporate purchasing cards for business and commercial use; and

C. Company desires to obtain and use, and Bank of America desires to issue to Company, one or more corporate purchasing card accounts which will be subject to the terms and conditions in this Agreement.

NOW, THEREFORE, for valuable consideration, the parties agree as follows.

DEFINITIONS.

"Account" means each MasterCard or Visa Corporate Purchasing Card account, including a Cardless Account, which Bank of America (i) issues pursuant to this Agreement or (ii) issued (and still outstanding as of the Effective Date of this Agreement) pursuant to a previous agreement no longer in effect. Each reference in this Agreement to "the Account" will mean Company's Account, a Participant's Account, a Cardholder's Account, or any combination of them, as applicable.

"Billing Statement" means the official invoice provided to Company, Participant and/or Cardholder which identifies each Transaction posted during the billing cycle, the date of each Transaction and the applicable fees and charges. Unless otherwise determined by Bank of America, the official invoice is in paper, not electronic, medium.

"Business Use" means use for business-related purposes.

"Card" means each plastic charge card which Bank of America issues or has issued for the Account which is not a Cardless Account.

"Card Administrator" means an individual or individuals authorized by Company or a Participant, as applicable, to request Bank of America to add or delete Cards or Convenience Checks and to communicate with Bank of America and take other action needed to maintain the Account.

"Cardholder" means an employee or agent of Company or of a Participant who Company or a Participant designates in writing and who Bank of America approves to receive an Account or a Device, including a Cardless Account. If a Cardholder or a Card Administrator makes a Device available for use by another party, that person will be considered a Cardholder.

"Cardless Account," also called a "Control Account," means an Account for which Bank of America assigns only an Account number, but provides no Card or Convenience Checks.

"Cash Advance" means use of the Account to obtain cash from a participating financial institution or merchant or from an ATM, to write Convenience Checks, or to obtain items readily convertible into cash including, without limitation, money orders, travelers checks, foreign currency, lottery tickets, casino chips and racetrack wagers.

"Convenience Check" means each check which Bank of America at its discretion provides to Company or a Participant to use the Account.

"Device" means a device such as a Card, Account number or, where applicable, a Convenience Check which Bank of America provides under this Agreement to use to make Transactions or other charges on the Account.

"Guarantor" means a person or entity, other than Company or a Participant, that agrees to assume responsibility for the obligations of this Agreement, including payment of any amounts owed.

"Participant" means a subsidiary, affiliate or division of Company which Company designates in writing on a Participant Account Form and which Bank of America approves, for Bank of America to issue an Account with its own Account number. A Participant Account Form, upon completion by Company and approval by Bank of America, will be made a part of this Agreement.

"Payment Due Date" means the payment due date shown on the Account Billing Statement which date shall be the last day of the Settlement Period.

"Settlement Period" means the number of days after the statement closing date within which payment is due, as designated in Schedule A hereto.

"Transaction" means a purchase or reservation of goods or services or a Cash Advance made or facilitated by use of a Device or the Account.

"Unauthorized Use" means use of the Account or a Device by a person (i) who is not a Cardholder; (ii) who does not have actual, implied or apparent authority to use the Account or Device; and (iii) whose use does not result in a direct or indirect benefit for Company, a Participant or Cardholder.

USE OF ACCOUNT AND DEVICES.

The Account and Devices will be used only for Transactions in connection with the procurement of goods and services incidental to Company's or Participant's business or business activities, including travel and entertainment expenses.

The Account will be used for Business Use only, and Company will so advise and require each Cardholder and each Participant accordingly. Company will pay for Transactions and fees which Bank of America applies to the Account or Devices.

Company and each Participant will follow, and will take all steps necessary or prudent to require each Cardholder to follow, the following procedures:

1. A Cardholder using a Card for a Transaction may sign a sales draft or Cash Advance draft which the merchant's financial institution processes. However, failure to sign a sales draft or receive a sales receipt will not relieve Company of its obligations under this Agreement. Company should retain or should direct each Cardholder to retain each sales draft or Cash Advance draft as a record of the Transaction.
2. A Card will not be used before the Card's valid date or after the Card's expiration date.
3. Company and each Cardholder will check to see that the information embossed on a new Card or printed on Convenience Checks and sent to Company or Cardholder is correct. If there is an error, Company will notify Bank of America immediately.

If Bank of America provides Convenience Checks, they may not be used to make payment on the Account or any other loan or line of credit. Convenience Checks will not be returned to Company or any Participant or Cardholder. Bank of America may pay a Convenience Check and post its amount to the Account regardless of any restriction on payment, including, without limitation, a Convenience Check which is post-dated, states that it is void after a certain date or states a maximum or minimum amount for which it may be written. To stop payment on a Convenience Check, Company or Cardholder must call Bank of America at the Customer Service number shown on the Account Billing Statement with all the following information: the exact dollar amount of the Convenience Check; the Convenience Check number; the Account number; the name of the party to whom the Convenience Check was written and the name of the person who signed the Convenience Check. Bank of America will stop payment on the Convenience Check if Bank of America receives the stop payment request by the business day before the day Bank of America pays the Convenience Check. The date Bank of America pays the Convenience Check may be before the date it posts to the Account. The stop payment order will remain effective for six (6) months.

Bank of America may, at the request of Company or a Participant, establish a Cardless Account.

If Company or Participant desires to terminate the Account or Card use (including, where applicable, use of Convenience Checks) by a Cardholder, Company or Participant, as applicable, will notify Bank of America and will destroy the Devices issued or provided to that Cardholder. Company may exclude a Participant from the Account by giving Bank of America written notice, and Bank of America will have a reasonable period of time to act on any such notice. If this Agreement terminates, Company will be responsible for promptly destroying all Devices for the Account.

A Transaction may require the merchant, supplier or financial institution to seek prior authorization from Bank of America before completing the Transaction. If Company advises Bank of America in writing of its desire to restrict a certain type of Transaction identified by a certain merchant category ("Merchant Category Code"), Bank of America will take reasonable steps to withhold a requested authorization of that Transaction type, provided it is identified by the appropriate Merchant Category Code. However, Bank of America will not be liable to Company if merchants, suppliers or financial institutions nonetheless accept a Card or the Account for that Transaction type.

Bank of America is not liable if a merchant or supplier does not honor a Card or if authorization is not given.

If Participant is or no longer will be a majority-controlled subsidiary, affiliate or division of Company, Company must notify Bank of America immediately; Bank of America will have the right to terminate any Account or Device which that Participant or Participant's Cardholders use.

Bank of America may, at the request of Company or a Participant, establish an Account with a designation which is not an actual individual, including, without limitation, a vehicle identification number, license number, department name or "Authorized Representative".

Bank of America may deny authorization for any Transaction if Bank of America suspects fraudulent activity or Unauthorized Use, or for other reasons. Bank of America is not liable for any failure to authorize a Transaction.

CHARGE LIMIT.

There will be one total charge limit for the Company Account and Participant Account ("Aggregate Charge Limit"). Each Card will have its own charge limit ("Card Limit"). In its sole discretion, and for purposes of limiting potential losses or for administering time-sensitive requests, Bank of America may increase or decrease the Aggregate Charge Limit or any Card Limit.

Company, a Participant and Cardholders will not incur Transactions which would cause the sum of Company's and Participant's unpaid balance to exceed the Aggregate Charge Limit or to cause a Card Limit to be exceeded. Any amount exceeding the Aggregate Charge Limit or Card Limit shall be immediately due and payable.

If the Aggregate Charge Limit or a Card Limit is exceeded, or if an Account payment is late, Bank of America shall no longer be obligated to allow any further Transactions.

COMPANY LIABILITY; ACCEPTANCE OF AGREEMENT.

By activating, signing or using any Device or Account, Company agrees to be bound by this Agreement regardless whether Company signs this Agreement. Company will pay Bank of America for all Transactions, whether Company or Cardholder billed, regardless of the purpose for which the Transaction is made, and for applicable fees and charges described in Schedules A and B.

Company's responsibility for Card and Account usage will continue until: (1) Receipt by Bank of America of Company's or a Participant's written notice to close the Card or the Account; (2) actual closure of the Account by Bank of America; and (3) payment to Bank of America of all amounts due under this Agreement.

Company does hereby grant to Bank of America a security interest and contractual right of offset in and to, all deposit accounts now or subsequently maintained by the Company with Bank of America or any of its affiliates and subsidiaries. The Company, by its execution of this Agreement or use of a Device, authorizes Bank of America to enter into a master control agreement with its affiliates and subsidiaries authorizing, upon the occurrence and continuance of any default under this Agreement, the disposition of funds in any such deposit account to satisfy all liabilities incurred hereunder, without the further consent of the Company. The Company's execution of this Agreement or use of a Device shall constitute an authenticated record for the purposes of establishing control of such deposit accounts under the Uniform Commercial Code.

Company agrees to indemnify Bank of America and hold Bank of America harmless from, all claims, actions, losses, costs and expenses (including attorneys' fees and allocated costs for in-house legal services) incurred by Bank of America arising from any Unauthorized Use of a Cardless Account or Account established in the name of "Authorized Representative," a department name or other such designation that is not an actual individual. This Section 4.D. takes precedence over any restriction on Company's liability contained in this Agreement.

BILLING STATEMENTS.

Bank of America will provide a Billing Statement to the Card Administrator or to such other Company employee or agent as Company designates in writing.

Bank of America may provide Company and the Participant, as applicable, a monthly report listing each Cardholder who has an Account balance unpaid since the Payment Due Date on the most recent Billing Statement issued to the Cardholder and therefore is subject to cancellation of Account charge privileges ("Delinquency Report"). Providing the Delinquency Report shall not constitute a waiver by Bank of America of any rights and remedies it may have under this Agreement.

PAYMENTS.

Company will pay Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date shown on that Billing Statement. If Company does not make payment in full by the Payment Due Date, Bank of America, at its option, may assess a late fee and finance charge in accordance with this Agreement. Assessment of a late fee or finance charge shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" in which to cure any default.

Company or a Participant may arrange for direct Account payment to Bank of America from Cardholders. No such arrangement will amend or modify Company's liabilities, including responsibility for payment, in this Agreement.

There is no right to defer any payment due on the Account.

Company shall make payment electronically via the Automated Clearing House (ACH), and Bank of America may initiate ACH debits to any deposit account specified by Company at any financial institution.

All remittances must include the complete Account number in order to be processed. Failure to include the complete Account number shall constitute a failure to make the payment.

CARD ADMINISTRATOR.

Company will identify one or more Card Administrator(s) who will be Bank of America's primary contact for such things as: designation of Cardholders, designation of Cardholders to receive any Devices, and correspondence regarding the Account or this Agreement, except as provided elsewhere in this Agreement. Company may add, change or eliminate a Card Administrator by giving Bank of America written notice.

LOST OR STOLEN CARDS.

Each Transaction resulting from use of a Device will be assumed to be an authorized Transaction unless Bank of America has received prior written notice from Company or a Participant, as applicable, that the Cardholder is no longer authorized to use the Account.

If a Device such as a Card or Convenience Check is lost or stolen, or if there is possible Unauthorized Use, Company must require each Participant and Cardholder to notify Bank of America as soon as practically possible within the first 24 hours following discovery of the loss or theft or possible Unauthorized Use by phoning Bank of America at the phone number provided for such notice on the Billing Statement, with written confirmation as requested in connection with Bank of America's investigation. If (i) notice as provided in this Section is given within the first 24 hours; and (ii) Company assists Bank of America in investigating facts and circumstances relating to the loss or theft or possible Unauthorized Use of any Device, including without limitation, obtaining an affidavit or similar written, signed statement from the Cardholder, then Company or Participant, as applicable, will not be liable for Transactions resulting from Unauthorized Use .

LICENSE TO USE COMPANY'S MARKS.

If requested by Company, Bank of America may place Company's trademark, tradename, service mark and/or designs ("Company's Marks") on the Card and collateral materials. Company shall provide the graphics to Bank of America in sufficient time to allow for review and approval by Bank of America and, if necessary, the respective card association. Company grants to Bank of America a non-exclusive license to use, during the term of this Agreement, Company's Marks on the Cards and on other materials related to the Accounts. Company agrees to defend, indemnify and hold harmless Bank of America, its affiliates and their respective directors, officers, agents and employees for any and all losses, costs, liabilities or expenses (including, without limitation, attorneys' and expert witnesses' fees) incurred or arising from any claim that the use of any of Company's Marks infringes the intellectual property rights of any third party.

SOFTWARE.

The use of any third party software program and related documentation, if any, provided in connection with this Agreement shall be governed by the terms of the end-user agreement accompanying the software.

Upon payment of the requisite license and related fees, Bank of America grants Company a non-exclusive, non-transferable, enterprise license to use for internal business purposes the EAGLS[®] software ("Software") and documentation as amended from time to time by Bank of America ("Documentation") which is provided by Bank of America to Company. Title, ownership rights and intellectual property rights in the Software and Documentation shall remain in Bank of America or its parent, Bank of America Corporation. Company acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Bank of America's or its parent company's rights with respect to the Software or Documentation. Company agrees to use the Software and Documentation as specified by Bank of America

Subject to the terms of this Agreement, Bank of America grants Company a non-exclusive, non-transferable, enterprise license to use for internal business purposes the Works application ("Application") and documentation as amended from time to time by Bank of America ("Documentation") which is provided by Bank of America to Company. Title, ownership rights and intellectual property rights in the Application and Documentation shall remain with Austin Acquisition, Inc. (formerly known as Works Operating Company and referred to herein as "Works"), the entity that licenses the Application to Bank of America and the owner of the Application. Company acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Bank of America's or Works' rights with respect to the Application or Documentation. Company agrees to use the Application and Documentation as specified by Bank of America.

FEES. Company agrees to pay the fees and charges set forth in Schedule A and Schedule B hereto which are incorporated herein by reference.

FINANCE CHARGE.

In the event Company fails to pay the total amount shown as due on a Billing Statement by the Payment Due Date shown on that Billing Statement, the amount unpaid shall be subject to a finance charge starting no sooner than the first day of the next billing cycle. To calculate the finance charges for a billing cycle, the daily periodic rate is multiplied by the average daily balance, and that product is multiplied by the number of days in the billing cycle. The daily periodic rate is the annual percentage rate divided by 365. The annual percentage rate is the prime rate published in the Money Rates section of *The Wall Street Journal* in effect on the first day of each calendar month (the "Prime Rate") plus the number of percentage points stated in Schedule A. The average daily balance is the sum of the daily past due balances (including, for each day, finance charges from previous day) less payments credited to the past due balance, divided by the number of days in the billing cycle.

AMENDMENT OF THIS AGREEMENT.

Bank may, upon written notice to Company, amend this Agreement by changing, adding or deleting any term, condition, service or feature of an Account or of this Agreement. Company shall have thirty (30) days from the effective date of the amendment to notify Bank of America in writing that the amendment is not accepted. Any such notice of non-acceptance shall be deemed to be a notice of termination under Section 18 of this Agreement. Failure of Company to provide a notice of non-acceptance within thirty (30) days after the effective date of an amendment will mean that Company has accepted the amendment. Unless otherwise stated, any amendment will apply to an Account's unpaid balance and to new activity on the Account.

MERCHANT/SUPPLIER CLAIMS AND DISPUTES.

Bank of America will have no liability for goods or services purchased with, or for a merchant's or supplier's failure to honor purchases made with an Account or Device. Company will make a good-faith effort to resolve any dispute with a merchant or supplier arising from a Transaction.

In a dispute with a merchant or supplier, the rights of the Company, any Participant and each Cardholder against the merchant or supplier will become the rights of Bank of America, and Company and Participant will assign (and require the affected Cardholder to assign) to Bank of America each of their rights to assert a billing error against the merchant or supplier. Company and the Participant will, and will require the Cardholder to, do whatever is necessary to enable Bank of America to exercise those rights. Bank of America may reverse from the Account any credits relating to the dispute.

FOREIGN TRANSACTIONS/FEEES.

If you make a Transaction in currency other than U.S. dollars, Visa or MasterCard will convert the charge or credit into a U.S. dollar amount. The conversion rate on the processing date may differ from the rate on the date of your Transaction.

The exchange rate used by Visa will either be (i) a rate selected by Visa from a range of rates available in wholesale currency markets for the applicable central processing date, which rate may differ from the rate Visa receives, or (ii) the government-mandated rate in effect for the central processing date. MasterCard will use an exchange rate of either (i) a wholesale market rate or (ii) a government-mandated rate. We may add a 1% fee to the U.S. dollar amount of any Transaction that is made in foreign currency or that is made outside the United States even if you pay in U.S. dollars (the "International Transaction Fee"). The International Transaction Fee will be shown in the Activity section on your billing statement. The International Transaction Fee will be aggregated in the Other Fees category on the Summary section of your statement.

CONFIDENTIALITY

BANK OF AMERICA'S OBLIGATION. Bank of America acknowledges that information it obtains from Company in connection with any Account, Card or Transaction it provides to Company under the terms of this Agreement may be confidential. Bank of America will maintain the confidentiality of such information in accordance with its normal procedures for safeguarding customer information and the policy reflected in the Bank of America Corporation Code of Ethics.

COMPANY OBLIGATION.

Company acknowledges Bank of America's claim to proprietary rights in the Application, user identification codes, passwords, codes, keys, test keys, security devices, imbedded algorithms, digital signatures and certificates, other similar devices and information, Documentation and related documentation Bank of America provides to Company ("Materials"), and that the Materials constitute Bank of America's "trade secrets" or trade secrets of its licensors or vendors. Company understands that all Materials are confidential and it will:

Safeguard the Materials at all times.

Establish and maintain procedures to assure the confidentiality of the Materials and any password or code subsequently changed by Company.

Use the Materials only for the purposes for which Bank of America provides them.

Notify Bank of America promptly by telephone, confirmed in writing, if any Materials are lost or their confidentiality is compromised.

Company will not, nor will it allow anyone else to, do any of the following without Bank of America's prior consent:

Disclose any Materials to any person or entity, except to its employees and agents with a need to know the Materials.

Make any copies, in whole or in part, of any Materials in whatever form or medium (electronic, printed or otherwise) in which they may exist from time to time, except as provided in the Software section.

Translate, reverse engineer, disassemble or decompile any Application or security devices.

These confidentiality obligations continue after this Agreement is terminated.

Company has sole responsibility for the custody, control and use of all Materials. Company agrees that no individual will be allowed to initiate a request or other instruction contemplated in this Agreement or to have access to any Materials without proper supervision and strict security controls. If a Service requires use of user identification codes or passwords, Bank of America will be fully protected in relying on the correct user identification codes and passwords, as described in the relevant Documentation.

GENERAL

This section does not limit either party's ability to disclose information (i) that the other party has approved by prior writing for disclosure; (ii) that is disclosed to its professional advisors or auditors; (iii) that becomes public other than through a breach of these confidentiality obligations, (iv) that was in its possession or available to it from a third party prior to its receipt of it in connection with the service covered by this Agreement, (v) which is obtained by it from a third party who is not known by it to be bound by a confidentiality agreement with respect to that information, (vi) as required or requested by any securities exchange or regulatory body to which either party is subject or submits or (vii) as otherwise required to be disclosed by law or by legal or governmental process.

In addition, Company agrees (i) that Bank of America may disclose to its offices, affiliates, officers, employees and agents with a need to know any information Bank of America obtains about Company and (ii) that those offices, affiliates, officers, employees and agents may disclose such information as permitted under the immediately preceding paragraph.

Company further agrees that any data or information other than Personal Data, defined below, that relates to Card usage via the Application and that is acquired by Bank of America or Works in the course of the provision of the Application or services under this Agreement will belong equally to each party and to Works, and nothing in this Agreement will prohibit either party or Works from disclosing or using such data or information in its aggregate form.

Company acknowledges and agrees that data processing related to the services covered by this Agreement and its associated accounts may take place in countries other than those where Company and its accounts with Bank of America are located. Company further understands that information concerning its relationship with Bank of America may be available on Bank of America's electronic data system both for information management purposes and in order to enable Company to benefit from Bank of America's electronic banking services. Company understands and agrees that, as a result, its banking relationship information may be available to some of Bank of America's officers outside the country or countries where Company and its accounts are located. Company authorizes Bank of America to transmit Company's banking relationship information across national borders, notwithstanding the banking secrecy laws of any of the countries involved, as necessary or appropriate to provide the service covered by this Agreement.

It is possible that in providing the service Bank of America will transmit Personal Data. Bank of America will only transmit Personal Data to its locations, to locations of its affiliates or to others in order to provide the service. Bank of America may contract with others to provide data transmission or storage services to it. In that case, Bank of America will require that they treat Personal Data solely in accordance with Bank of America's instructions. Company agrees to comply with any directions Bank of America may give Company from time to time with respect to the Personal Data. "Personal Data" means any cardholder or company specific data created or obtained in connection with Company's Card Account, including names, addresses, transactional data, Card numbers, credit limits, or other financial data or *identifying a living individual*.

Neither party will use the other'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 of America may use Company's name as a reference in service proposals if Bank of America obtains Company's prior oral approval for such use.

These obligations continue after the Agreement is terminated.

REPRESENTATIONS AND WARRANTIES.

Company and each Participant, as applicable, represents and warrants to Bank of America that:

1. In each state in which it conducts its business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name statutes.
2. All financial and other information that it has supplied or will supply to Bank of America, including without limitation, all information on its application for the Account, is (a) accurate; (b) sufficiently complete to give Bank of America accurate knowledge of its and any Guarantor's financial condition; (c) in compliance with all laws and regulations that apply.
3. There is no lawsuit, tax claim or other dispute pending or threatened against it which, if lost, would impair Company's financial condition or ability to repay Bank of America under this Agreement, except as has been already disclosed in writing to Bank of America.
4. Company represents and warrants that each Cardholder is a current employee or agent of the Company or Participant. Company represents and warrants that the identification information relating to the Cardholder is accurate and consistent with the information contained in Company's employment records.

B. Bank of America represents and warrants to Company and each Participant that Bank of America is a national banking association with its principal office in Delaware.

C. Each party to this Agreement (Company, each Participant and Bank of America) represents and warrants that:

1. There is no event which constitutes, or with notice or lapse of time or both would constitute, a default on its part under this Agreement.
2. Each person signing this Agreement below on its behalf presently hold the title set next to his/her name and is duly authorized by it to bind the party to the terms and conditions of this Agreement.

PERIODIC REVIEW OF COMPANY.

During the term of this Agreement, when Bank of America from time to time requests information from Company or a Participant for the purpose of reviewing Company's or Participant's ability to perform its obligations under this Agreement, Company will furnish the information promptly. Bank of America and its affiliates and processing agents may exchange information about Company and Participants as that information pertains to the rights and obligations in this Agreement.

Company will notify Bank of America in writing immediately of any change in the business name, the principal officers like the Chief Executive Officer and Chief Financial Officer, the mailing address or the phone number of Company or a Participant. Company will also notify Bank of America of any change of mailing address or phone number of any of its Cardholders.

TERMINATION. Either party may terminate this Agreement with or without cause upon sixty (60) days' prior written notice to the other party.

EVENTS OF DEFAULT

The following are events of default hereunder: (a) the failure to pay or perform any obligation, liability or indebtedness of Company, a Participant or a Guarantor (each, an "Obligor") to Bank of America, or to any affiliate or subsidiary of Bank of America Corporation, whether under this Agreement or any other agreement, as and when due (whether upon demand, at maturity or by acceleration); (b) the failure to pay or perform any other obligation, liability or indebtedness of any Obligor to any other party; (c) the death of any Obligor (if an individual); (d) the resignation or withdrawal of any partner or a material owner of any Obligor as determined by Bank of America in its sole discretion; (e) the commencement of a proceeding against any Obligor for dissolution or liquidation, the voluntary or involuntary termination or dissolution of any Obligor or the merger or consolidation of any Obligor with or into another entity;

(f) the insolvency of, the business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, the assignment for the benefit of creditors by, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness, composition or extension by or against any Obligor; (g) the determination by Bank of America that any representation or warranty made to Bank of America or to any affiliate or subsidiary of Bank of America Corporation by any Obligor in any agreement or otherwise is or was, when it was made, untrue or materially misleading; (h) the failure of any Obligor to timely deliver such financial statements, including tax returns, other statements of condition or other information, as Bank of America shall request from time to time; (i) the entry of a judgment against any Obligor which Bank of America deems to be of a material nature, in Bank of America's sole discretion; (j) the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property of any Obligor; (k) the determination by Bank of America that it is insecure for any reason; (l) the determination by Bank of America that a material adverse change has occurred in the financial condition of any Obligor; (m) the determination by Bank of America that any Obligor fails to meet the credit criteria initially used by Bank of America to approve Obligor; or (n) the failure of any Obligor to comply with any law or regulation controlling its operation.

REMEDIES UPON DEFAULT.

Whenever there is a default under this Agreement, (a) the entire balance outstanding on all Accounts and all other obligations of any Obligor to Bank of America (however acquired or evidenced) shall, at the option of Bank of America, become immediately due and payable; (b) any obligation of Bank of America to permit further Transactions under this Agreement shall immediately cease and terminate; and/or (c) this Agreement or any Account may be terminated by Bank of America. The foregoing remedies are in addition to any other rights of Bank of America under this Agreement.

EFFECT OF TERMINATION.

Upon termination of this Agreement, Company will be responsible for promptly destroying all Devices. Termination will not affect Company's liability for any charges or other obligations under this Agreement. After termination, this Agreement (except the ability to use the Account for additional Transactions) will remain in force until all Transactions and Company's other obligations under this Agreement are paid and satisfied in full. Further, Company shall ensure that no new Transactions are made on the Account. However, if any Transactions are made after termination, Company will continue to be liable until they are paid in full.

GOVERNING LAW.

This Agreement is made in Delaware. This Agreement and the Account, as well as Bank of America's rights and duties regarding this Agreement and the Account, will be governed by the laws respecting national banking associations and, to the extent not so covered, by the laws of the State of Delaware, regardless of where Company resides or where a Cardholder uses the Account at any time.

ARBITRATION.

This paragraph concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this Agreement (including any amendments or modifications); or (ii) any document related to this agreement; (collectively a "Claim").

At the request of any party to this agreement, any Claim shall be resolved by binding arbitration conducted in the United States of America in accordance with the United States Arbitration Act (Title 9, U.S. Code) under the Commercial Arbitration Rules of the American Arbitration Association. Under these procedures, the Claim is submitted to a neutral person for determination in place of a trial before a judge or jury. Judgment upon the award made by the arbitrator may be entered in any court having jurisdiction.

This paragraph does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or nonjudicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

COSTS AND ATTORNEY FEES.

If either party incurs expenses related to the enforcement of, or takes collection action under, this Agreement, the prevailing party is entitled to recover from the other party costs and reasonable attorney fees.

TELEPHONE MONITORING.

Bank of America may listen to and/or record telephone calls between a Bank of America employee and any person acting on Company's or a Participant's behalf for the purpose of monitoring and improving the quality and effectiveness of Bank of America's communication.

SUCCESSORS AND ASSIGNS.

This Agreement and all terms and conditions hereof, are not assignable or transferable by Company or any Participant without Bank of America's prior written consent. All the terms and provisions of this Agreement will inure to the benefit of and be binding upon each party and its successors and permitted assigns.

NOTICES.

Any notice required or permitted under this Agreement shall be effective only if it is in writing and (i) personally delivered, (ii) sent by U.S. mail, postage prepaid, (iii) sent by a nationally recognized overnight delivery service, with delivery confirmed, (iv) telecopied, if confirmed with an error-free transmission report, or (v) e-mailed to such e-mail address as shall have been furnished to the other party, with delivery confirmed, addressed as set forth below. Such notices shall be deemed to have been duly given either five (5) business days after the date of mailing by U.S. mail as described above or if otherwise sent, on the business day of receipt. Notices delivered after 5:00 p.m. shall be considered received on the next business day. A party may alter the address or telecopy number to which notices are to be sent by giving notice of such change in conformity with the provisions of this Section 27.

Notices to Bank of America must be sent to:

- A. (for U.S. Mail)
Bank of America
P.O. Box 28
Norfolk, VA23510

(for overnight delivery service)

Bank of America
Commercial Card
Floor 11
3 Commercial Place
Norfolk, VA 23510-2108

OR:

- B. Bank of America's Large Corporate and Commercial Card Services representative for Company's program at the address designated during implementation of Company's program.
- C. WITH A COPY to the following address if the notice relates to a Claim:

Counsel for Commercial Card Services
Bank of America Legal Department
101 South Tryon Street
NC1-002-29-01
Charlotte, NC 28255

Notices to Company must be sent to:

A. State of Michigan_
530 West Allegan_
Lansing, MI 48909
Fax: 517-355-0046
e-mail: castrom@michigan.gov
Attention: _Melissa Castro

OR:

B. Company's corporate account address as designated in Bank of America's credit card processing system.

SEVERABILITY. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions in this Agreement will remain valid and enforceable.

LIMITATION OF LIABILITY. BANK OF AMERICA SHALL NOT BE LIABLE TO COMPANY, ANY PARTICIPANT OR CARDHOLDER, FOR ANY ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THIS AGREEMENT EXCEPT FOR DIRECT DAMAGES ARISING FROM BANK OF AMERICA'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. IN NO EVENT SHALL BANK OF AMERICA BE LIABLE TO COMPANY, ANY PARTICIPANT OR CARDHOLDER, FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOST PROFITS OR LOST DATA.

WARRANTY DISCLAIMER. ALL SERVICES, EQUIPMENT, SOFTWARE AND OTHER PRODUCTS FURNISHED BY BANK OF AMERICA TO COMPANY OR A PARTICIPANT ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS AND BANK OF AMERICA EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

ONE AGREEMENT. This Agreement and any other agreements required by this Agreement, collectively: (a) represent the sum of the understandings and agreements between Bank of America and Company concerning the subject matter of this Agreement; (b) replace any prior oral or written agreements between Bank of America and Company concerning this Agreement, and (c) are intended by Bank of America, Company and each Participant as the final, complete and exclusive statement of the agreement between/among them. No failure on the part of Bank of America to exercise, and no delay in exercising any right under this Agreement, will operate as a waiver of that right. Unless other provisions in this Agreement expressly provide otherwise, the terms of this Agreement will prevail if there is a conflict between this Agreement and any other agreements required by this Agreement.

**ADDENDUM TO BANK OF AMERICA
CORPORATE PURCHASING CARD AGREEMENT (Attachment B)**

This addendum (THE "Addendum") amends the Bank of America Corporate Purchasing Card Agreement (Attachment B) between the parties dated December 17, 2008 (the "Agreement").

WHEREAS, the parties desire to add to and modify certain terms of the Agreement;

NOW, THEREFORE, for valuable consideration, the parties hereby agree as follow:

1. DEFINITIONS

Terms capitalized herein and not otherwise defined shall be given the meaning ascribed to them in the Agreement.

2. AMENDMENTS

Section 1. DEFINITIONS. Section 1, paragraph H, is deleted in its entirety.

Section 1. DEFINITIONS. Section 1, paragraph I, is deleted in its entirety.

Section 1. DEFINITIONS. Section 1, paragraph J, is deleted in its entirety and replaced by the following:

J. "Device" means a device such as a Card, or Account number which Bank of America provides under this Agreement to use to make Transactions or other charges on the Account."

Section 1. DEFINITIONS. Section 1, paragraph O, is deleted in its entirety and replaced by the following:

O. "Transaction" means a purchase or reservation of goods or services made or facilitated by use of a Device or the Account."

Section 2. USE OF ACCOUNT AND DEVICES. Section 2, paragraph C. 1, is deleted in its entirety and replaced by the following:

"1. A Cardholder using a Card for a Transaction may sign a sales draft which the merchant's financial institution processes. However, failure to sign a sales draft or receive a sales receipt will not relieve Company of its obligations under this Agreement. Company should retain or should direct each Cardholder to retain each sales draft as a record of the Transaction."

Section 2. USE OF ACCOUNT AND DEVICES. Section 2, paragraph C. 3, is deleted in its entirety and replaced by the following:

"3. Company and each Cardholder will check to see that the information embossed on a new Card and sent to Company or Cardholder is correct. If there is an error, Company will notify Bank of America immediately."

Section 2. USE OF ACCOUNT AND DEVICES. Section 2, paragraph D, is deleted in its entirety.

Section 2. USE OF ACCOUNT AND DEVICES. Section 2, paragraph F, is deleted in its entirety and replaced by the following:

"F. If Company or Participant desires to terminate the Account or Card use by a Cardholder, Company or Participant, as applicable, will notify Bank of America and will destroy the Devices issued or provided to that Cardholder. Company may exclude a Participant from the Account by giving Bank of America written notice, and Bank of America will have a reasonable period of time to act on any such notice. If this Agreement terminates, Company will be responsible for promptly destroying all Devices for the Account."

Section 4. COMPANY LIABILITY; ACCEPTANCE OF AGREEMENT. Section 4, paragraph C is deleted in its entirety.

Section 4. COMPANY LIABILITY; ACCEPTANCE OF AGREEMENT. Section 4, paragraph D is deleted in its entirety and is replaced by the following:

"D. Company agrees that Bank of America will not be liable for any claims, actions, losses, costs and expenses (including attorneys' fees and allocated costs for in-house legal services) arising from any Unauthorized Use of a Cardless Account or Account established in the name of "Authorized Representative," a department name or other such designation that is not an actual individual. This Section 4.D. takes precedence over any restriction on Company's liability contained in this Agreement."

Section 6. PAYMENTS. Section 6a is deleted in its entirety and replaced by the following:

"A. Company will pay Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date shown on that Billing Statement.

Section 9. LICENSE TO USE COMPANY'S MARKS. Section 9 is deleted in its entirety and replaced by the following:

"If requested by Company, Bank of America may place Company's trademark, tradename, service mark and/or designs ("Company's Marks") on the Card and collateral materials. Company shall provide the graphics to Bank of America in sufficient time to allow for review and approval by Bank of America and, if necessary, the respective card association. Company grants to Bank of America a non-exclusive license to use, during the term of this Agreement, Company's Marks on the Cards and on other materials related to the Accounts."

Section 12. FINANCE CHARGES. Section 12 is removed in its entirety.

Section 13. AMENDMENT OF THIS AGREEMENT. Section 13 is deleted in its entirety and replaced by the following:

"Bank may, upon written notice to Company, amend this Agreement by changing, adding or deleting any term, condition, service or feature of an Account or of this Agreement. Company shall have thirty (30) days from the effective date of the amendment to notify Bank of America in writing that the amendment is not accepted. Failure of Company to provide a notice of non-acceptance within thirty (30) days after the effective date of an amendment will mean that Company has accepted the amendment. Unless otherwise stated, any amendment will apply to an Account's unpaid balance and to new activity on the Account."

Section 19. TERMINATION. Section 19 is deleted in its entirety.

Section 20. EVENTS OF DEFAULT. Section 20 is deleted in its entirety.

Section 23. GOVERNING LAW. Section 23 is deleted in its entirety and replaced by the following:

“This Agreement is made in Michigan.”

Section 24. ARBITRATION. Section 24 is deleted in its entirety.

Section 25. COSTS AND ATTORNEYS FEES. Section 25 is deleted in its entirety.

Section 27. SUCCESSORS AND ASSIGNS. Section 27 is deleted in its entirety.

Section 30. LIMITATION OF LIABILITY. Section 30 is deleted in its entirety.

Section 32. ONE AGREEMENT. Section 32 is deleted in its entirety.

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

June 24, 2009

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467		TELEPHONE (989) 790-8349 Joseph Kiss
		BUYER/CA (517) 373-1080 Melissa Castro, CPPB
Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services - Statewide		
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012		
TERMS Net 45	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

Effective immediately, the following amendment is incorporated into this Contract:

“Schedule C Rebate – The Executive Office and Individual Personal Liability Cards, separate sub companies of the State of Michigan, will be excluded from the Purchasing Card rebate, and these companies’ volume will not be part of the State of Michigan’s card volume calculation. Both sub companies payment terms will be payment due 25 days after close of the cycle.”

All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per request from DMB/Financial Services and DMB/Purchasing Operations’ approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

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

March 31, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467 Joseph.kiss@bankofamerican.com	TELEPHONE (989) 790-8349 Joseph Kiss
	BUYER/CA (517) 373-1080 Melissa Castro, CPPB
	Contract Compliance Inspector: Natalie Spaniolo (517) 373-3696 Procurement Card Services - Statewide
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012	
TERMS Net 45	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective March 31, 2009, the Contract Compliance Inspector is changed to:

Natalie Spaniolo
Department of Management and Budget
Financial Services
(517) 373-3696
SpanioloN@michigan.gov

AUTHORITY/REASON:

Per request from DMB/Financial Services and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$150,000,000.00

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

December 29, 2008

NOTICE
TO
CONTRACT NO. 071B9200109
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467		TELEPHONE (989) 790-8349 Joseph Kiss
		BUYER/CA (517) 373-1080 Melissa Castro, CPPB
Contract Compliance Inspector: Ken Mitchell (517) 241-4121 Procurement Card Services - Statewide		
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012		
TERMS Net 45	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

The terms and conditions of this Contract are attached.

Current Authorized Spend Limit: **\$150,000,000.00**

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

**CONTRACT NO. 071B9200109
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Bank of America 231 S. LaSalle St. Chicago, IL 60467 Joseph.kiss@bankofamerican.com	TELEPHONE (989) 790-8349 Joseph Kiss BUYER/CA (517) 373-1080 Melissa Castro, CPPB
Contract Compliance Inspector: Ken Mitchell (517) 241-4121 Procurement Card Services - Statewide	
CONTRACT PERIOD: From: December 17, 2008 To: June 30, 2012	
TERMS <p style="text-align: center;">Net 45</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are attached.</p> <p>Current Authorized Spend Limit: \$150,000,000.00</p>	

<p>FOR THE CONTRACTOR:</p> <p style="text-align: center;">_____ Bank of America Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Elise Lancaster Director</p> <p style="text-align: center;">_____ Name/Title Purchasing Operations</p> <p style="text-align: center;">_____ Division</p> <p style="text-align: center;">_____ Date</p>
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STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B
Statewide Procurement Card Services

Buyer Name: Melissa Castro, CPPB
Telephone Number: 517-373-1080
E-Mail Address: castrom@michigan.gov

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Attachment A, Pricing
Attachment B, Bank of America Purchasing Card Agreement

DEFINITIONS

“Days” means calendar days unless otherwise specified.

“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/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) 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 States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DMB” means the Michigan Department of Management and Budget

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

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

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

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

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

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

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

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

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

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

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

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

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

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

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

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “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 this Contract.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This purpose of this Contract is to provide the State of Michigan with a highly accepted card program that will facilitate the ability to make purchases through the use of a no fee, no cost, revenue sharing with the State of Michigan, credit card program.

The credit card program will be used as a method to:

- 1) Increase the efficiency of low dollar purchases through the purchasing system by eliminating or reducing manual steps, costly paperwork, and administrative overhead;
- 2) Ensure sales tax is not paid for the purchase of goods;
- 3) Provide a flexible and automated, yet accountable, purchase and payment process for these lower dollar transactions;
- 4) Provide the State with a purchasing tool that provides useful spending measurement information by vendor or merchant category code;
- 5) Electronically interface between the State and the Contractor's financial and accounting processes in the most efficient and effective manner;
- 6) Ensure efficient turn time on transaction payment and maximize revenue sharing opportunities;
- 7) Must be able to provide the State of Michigan with data analysis of direct voucher spend as provided to the Contractor from the State's MAIN accounting system, to merchant/retailers that accept your company's credit card. This analysis is to report opportunities to expand the credit card program as a payment method within the State of Michigan;
- 8) Provide tools for an automated interface between transactions and existing contracts maintained on the State's procurement system electronically;
- 9) Provide State with transaction auditing methodology.

This Contract is effective December 17, 2008 through June 30, 2012. The period from December 17 through May 31, 2009 will be for implementation and transition from the previous vendor. No payments will be made to the Contractor for the implementation and transition period. The Contractor must begin providing all services within this Contract on June 1, 2009, with no interruption of service.

1.012 Background

The State of Michigan Procurement Card Program serves the executive, legislative and judicial branches government, which is divided into 23 departments or agencies.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor must provide a highly accepted card program that will facilitate the ability to make purchases through the use of a no fee, no cost, revenue sharing with the State of Michigan, credit card program, according to the specifications listed in this Contract.

1.022 Work and Deliverable

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. The work and deliverables are divided into two sections: (A) Program Specifications, and (B) Card Processes and Specifications.

A. Program Specifications

1. Acceptance
The issued cards must have a very high acceptance among merchants worldwide and especially in the State of Michigan, both Lower and Upper Peninsulas.

2. **Billing**
The State of Michigan cycles bills every 14 days. A statement is created in-house from the Purchasing Card database.
The Contractor will have billing statements available online. Billing statements can also be made available in paper form or through a master file transmission from the Contractor. Billing statement can be viewed at the company level or at other organizational level or at the individual cardholder level.
3. **Controls/Restrictions**
CASH ADVANCES ARE STRICTLY PROHIBITED along with any type of banking financial transactions such as money orders, checks, bonds or transfers. The Contractor must provide controls that will prevent the use of the card for cash advances, or for purchasing commodities or services with certain vendor types. For each cardholder, the State of Michigan shall be able to select predetermined purchase and activity limits. Controls include, but are not limited to, dollar and activity limits for single transactions, by day and month, being able to determine acceptable Merchant Category Codes that cardholders may use. The controls can be managed by profiles, which can be set to manage a single card or multiple cards in groups for optimum ease and efficiency.
4. **Customer Service**
The Contractor must maintain a 24-hour help line for cardholder problems and emergencies. This help line must be available at no additional cost to the State. If the help line is unavailable, calls will automatically be rerouted to another call center.
5. **Deleted/Not Applicable**
6. **Fees**
Fees must not be charged to the State solely for the purpose of establishing an account regardless of the purchasing activity on that account.
7. **Implementation**
The Contractor must transition the existing program to a similar program by June 1, 2009 including interfacing transactions into the State's accounting system. Purchases utilizing this system will begin on this date. Within 10 days of Contract signing, the Contractor will submit a final work plan. The automated interface (see Task A-13) is considered to be a critical deliverable and is expected to be completed and submitted to the State for final approval no later than March 31, 2009.

Once the Contract is completed, the Contractor Implementation Consultant will be assigned to the State. The Implementation Consultant will arrange a high level meeting with all the key personnel that will be used as the official kick off of the implementation/conversion process. There will be a discovery meeting where the Contractor's key personnel will be introduced, along with various key personnel from the State. The Contractor's team will then address the overall plan to convert/ implement the State's card program. The Contractor will assign an Implementation Engineer to lead the effort of configuring the application. Once this meeting is over, the Contractor's team will meet with the Program Administrator and other key team members to discuss the proposed hierarchy and rollout schedule. Then the implementation team will begin meeting with individual groups within the State according to the rollout schedule.

The Implementation Engineer will assist the State in designing the State's card program and implementation processes based on industry best practices, the State's guidelines, and program goals. Working together, the Contractor and the State will look at the State's current program, explore improvement strategies and existing strategies that the State feels will create opportunities for world-class performance of its card program. The State's overall hierarchy, and current cardholder data will be forwarded from the Contractor. This important data is the foundation for the overall implementation.

The Contractor's Implementation Engineer will assist the State in designing and configuring the

application to best fit the State's needs. As a team, the Contractor and the State will review the Contractor's Questionnaire, which will allow the Contractor to determine which features of the application are applicable to the State's program. Next, the Contractor will begin to collect configuration information so the Contractor's Implementation Engineer can begin the process of configuring the application. Additional information, such as information about the State's chart of accounts, will need to be collected. The Contractor's Implementation Engineer will use this information to configure the application in a Quality Assurance environment. Once this is completed, the Contractor's Implementation Engineer will set up an internet work session to review the configuration with the State. Once the application is configured to the State's specification, the Contractor's Implementation Engineer will load the configuration information into the Contractor's Production environment. Additionally, the Contractor's Implementation Engineer will work with the State to understand the format needed to load transaction data into the State's GL system. The Contractor's Implementation Engineer will work with the appropriate people to make sure that any necessary mapping files are developed and put into place.

At this point, the Contractor will receive an account initialization file from the bank and associate it with the State's configuration. Based on the rollout schedule, the Contractor's Implementation Engineer will load bulk card requests into the system, associating the cards with user accounts and card profiles (card profile control the settings on the cards). The Contractor will provide training to the State's program administrators and essential staff on the use of the Contractor's application. This training will be delivered remotely using internet conferencing sessions; which is an effective and efficient approach to educating users that may be geographically disbursed. If it is decided that cardholders will be accessing the application, the Contractor's Implementation Engineer will coordinate with the State when that access will be initiated. The Contractor's Implementation Engineer will continue to work with the State, loading bulk card requests and initiating cardholder access to the application according to the rollout schedule.

Cardholder training is provided using a proven train-the-trainer approach. The Contractor's Implementation Engineer will train those responsible for program management and training cardholders.

8. Liability

The State shall only be liable for the use of credit cards by authorized users provided that the use is within the monthly, daily, and single purchase limits established for the specific account, and the use is processed through a merchant whose Standard Industry Classification Code (SIC Code) is approved for participation (per State of Michigan's cardholder initial application).

In the event that cardholder abuse does occur, the Contractor provides coverage through the card association's misuse protection program. This coverage will be subject to the terms and exclusions of the misuse protection program as established from time to time by the program underwriters. The State must also meet all of its obligations under the program including but not limited to termination of the employee. The misuse protection program is automatically provided with commercial card programs and is offered free of charge and provides coverage up to \$100,000 per cardholder.

The State will not be liable for transactions resulting from unauthorized use (i.e. fraud) of a lost or stolen cardholder account as long as:

1. Notice is given to the Contractor as soon as practically possible within the first 24 hours following discovery of the loss, theft, or possible unauthorized use.
2. Organization and cardholder assist the Contractor in investigating facts and circumstances relating to the loss, theft, or possible unauthorized use.

It should be noted that the State would be liable for unauthorized charges on ghost, supplier and department accounts because the card associations limit the Contractor's ability to charge back unauthorized transactions to a supplier when the account does not belong to a specific cardholder. Due to the large number of authorization restrictions that are typically placed on these account types, unauthorized transactions are very infrequent.

9. Promotional Materials

The selling of the mail lists containing the names of cardholders is absolutely prohibited. Promotional materials may only be permitted with pre-approval of the State's Contract Administrator.

10. Master File

The cardholder master file must contain as a minimum the following information:

- Cardholder name
- Secondary name
- Account address
- Phone number
- Account number
- Alpha/numeric accounting codes
- Per transaction limit
- Daily spending limit
- Daily transaction limit
- Monthly transaction limit
- Monthly spending limit
- Approved SIC or merchant codes
- Expiration date
- Status

11. Payment

The Contractor must accept payment through the use of electronic funds transfer (EFT) from the State. Payments may be made directly to the Contractor, or to the bank account established by the Contractor to receive payments from the State. The responsibility to make payments will rest with the State, and not the individual employee/cardholder.

12. Reports

Reports must be available in a variety of formats (i.e., hard copy, magnetic formats such as tape or disk, or by electronic data interchange). The Contractor must have the ability to provide to the State or agencies upon request a copy of any individual transaction receipt.

13. Database Technology

The Contractor must be able to provide a web-based Internet customer accessible system, maintain this system with flexible capabilities and/or upgrades.

The Contractor's fully hosted, web-based application requires no hardware or software requirements on the State's part. All back-end systems are collocated in a secure data center. The Contractor's system is a pure Internet application that only requires an SSL-enabled browser such as Netscape Navigator or Internet Explorer.

- PC: MC Internet Explorer 6.0 or higher
- Mac: Mozilla Firefox 1.0 or higher

The Contractor agrees to make future upgrades in its systems and processes to reflect advancements in technology, hardware, and software at no cost to the State of Michigan and no reduction in revenue sharing. All such upgrades must be announced in advance of any change and agreed to by the State.

The Contractor is responsible for writing an automated interface program to support the upload of procurement card transactions into the State of Michigan MAIN FACS accounting system. The interface file must be in ASCII text format. The interface file format requirements are fixed and are non-negotiable. During the implementation process, the Contractor's implementation team will configure the application to map cardholders to the appropriate GL combinations based on the State's accounting structure. The Contractor will provide a mapper for the client's GL system in order to provide the required format. The interface must be submitted for final approval to the State no later than March 31, 2009.

The Contractor will maintain two years of data online as part of the application. The archive process consists of maintaining a backup system at our data center and performing a full backup on the database files every night. These tapes are rotated every Tuesday and placed in storage

offsite at a data security facility. The Contractor takes the last tape of each month and place it in a permanent storage bin that is kept at the data security facility. In addition, the Contractor rotates the last tape of a calendar year into the same permanent storage bin. Finally, the Contractor also copies backup files and logs to their disaster recovery site maintained at the headquarter location. The Contractor shall include a recovery plan in the event of a major disaster that disables most or all of the Contractor's processing capabilities for the State of Michigan. A major disaster includes, but is not limited to:

- A hardware system failure/collapse;
- A software system failure/collapse;
- Any natural disaster;
- Total loss of electrical/backup power.

The Contractor's system can fully recover within one hour of disaster.

14. Training

The Contractor must assist the State in the development of a training program and to provide materials and assistance to inform the departments and individuals participating in the State's Procurement Card Program.

The Contractor will provide hands on training for all program administrators and accounting staff as necessary. Typically training sessions for these staff members is conducted on-site. These training sessions include hands on use of the application for commonly performed procedures. These sessions are typically scheduled for 90 minutes and participants may also continue training online through the online training tools available within Contractor's system. For each user, manuals and help tools are provided online through their personal home page when they log into the Contractor's system. In addition to the training sessions, help tools and train-the-trainer classes conducted by the Contractor, training materials and help screens are always available online. These documents can also be printed from the application if desired.

B. Card Processes and Specifications:

1. Issuance

The State has established internal rules and procedures for issuance, security and operation matters related to the Procurement Card Program. The Contractor must assist the State with modification, enhancement and implementation of these rules upon request by the Contract Compliance Inspector. Departments will certify to the Contract Compliance Inspector prior to the issuance of cards that it has written procedures in place regarding authorized use of the cards.

2. Replacement

Lost or stolen cards must be replaced at no cost to the State.

Upon notification, cancellation of such cards is effective immediately and a new card may be issued. Typically, cards are issued within two business days following notification to the Contractor.

In the event of lost or stolen cards, the State cardholders must contact the Contractor's toll-free 7x24x365 Customer Call Center to arrange for card cancellation and replacement when traveling domestically or abroad. A lost or stolen card must be reported immediately to reduce liability.

3. Cancellation

The State shall not be liable for charges incurred after verbal or written notice to the Contractor to cancel a card. As part of its procedures, the State will recover credit cards whenever possible from employees upon retirement, discharge, or resignation.

The State is responsible for notifying the Contractor of the termination of an employee and for closing the account(s) of that terminated employee. As long as The State fulfills this requirement, there would be no further obligation after account closure except for the payment of any valid individual or recurring charges that were initiated by the cardholder prior to account closure but that posted after account closure.

4. Card Format Design

The card format should be distinctive so that it readily identifies the cardholder as an employee of the State of Michigan.

The Contractor will foil stamp the State's logo on the front of the card. If desired, the wording "For Official Use Only – Tax Exempt" and a tax-exempt number, can be printed on the front of each card.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor will assign a designated Implementation Engineer and Account Manager. Working as a team with the Contractor's technical and customer support groups, these professionals will oversee the State's Purchasing Card Program from implementation throughout the life of this Contract. They will provide strategic consultation to the State so that the State's program is running smoothly and according to contract.

The Contractor will provide a dedicated project manager for the entire implementation process, including the delivery of user training.

Project Manager/Implementation Engineer: Kevin Killens

The dedicated Account Manager will provide strategic program design, development and direction. The Account Manager is also the key communications contact to ensure that the Contractor's card program is tailored to meet the needs of the State. The dedicated Account Manager will provide consultation on the Contractor's account management system, information systems reporting, and all card products. In addition, the Account Manager will serve as the State's first point of contact for any program issues, and will provide constant monitoring and regular reporting to ensure that the State's card program is running as efficiently as possible.

Account Manager: Lesley Flakus

1.040 Project Plan

1.041 Project Plan Management

The Contractor will carry out the program implementation and ongoing services under the direction and control of the Department of Management and Budget, Office of Financial Services.

Although there will be continuous liaison with the Contractor team, the DMB-Office of Financial Services Contract Compliance Inspector will meet with the Contractor's program manager for the purpose of reviewing performance and providing necessary guidance to the Contractor in solving problems which arise.

The Contractor will submit brief written monthly summaries of performance which outline the work accomplished during the reporting period (in this context reporting period is the prior month); work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the DMB-Office of Financial Services Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans. These reports will be provided monthly until such time as the program is running successfully and at the State of Michigan Contract Compliance Inspector's direction are determined to no longer be necessary. The Contractor and the Contract Compliance Inspector on behalf of the State of Michigan shall continually evaluate the performance, efficiency and effectiveness of the program utilizing at least monthly status phone calls and an annual site visit by contractor program management.

Within 10 working days of the execution of the Contract, the Contractor will submit to the DMB-Office of Financial Services Contract Compliance Inspector for final approval a work plan. This final implementation plan must be in agreement with the plan proposed by the Contractor 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 project.

- (c) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- (d) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the work plan.

1.042 Reports

The purchasing card system must be capable of generating standard reports that detail cardholder transactions, cardholder listing, supplier information, accounting information at no additional cost and in a variety of formats. When requested, Contractor must be able to provide customized reports within the timeframes indicated in section 1.022.

1.050 Acceptance

1.051 Criteria

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

A. Document Deliverables:

Documents include, but not limited to, plans, design documents, project schedules, user guides, technical support manuals and procedure manuals.

1. Documents are dated and in electronic format, compatible with State of Michigan software.
2. Requirements Traceability Matrix is reviewed and updated throughout the development process to assure requirements are delivered in final product.
3. Beta documents are not accepted as final deliverable.
4. The documents will be reviewed and accepted in accordance with the requirements of the contract and the accepted Respondent's proposal.
5. The State of Michigan will review business documents within 30 days of receipt. Approvals will be written and signed by the State of Michigan Project Manager within DMB. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt.
6. The State of Michigan will review technical documents within 30 days of receipt. Approvals will be written and signed by the State of Michigan Project Manager. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt.
7. The State of Michigan Project Manager will review project documents within 30 days of receipt. Approvals will be written and signed by the State of Michigan Project Manager. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit documents for approval within 30 days of receipt.

B. Software Deliverables

Software includes, but not limited to, software product, development tools, support tools, data migration software, integration software and installation software.

1. Beta software is not accepted as final deliverable.
2. The software will be reviewed and accepted in accordance with the requirements of this contract and the accepted Respondent's proposal.
3. The State of Michigan will review software within 30 days of receipt for acceptance of functionality, usability, installation, performance, security, standards compliance, backup/recovery and operation. Approvals will be written and signed by the State of Michigan Project Manager. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit software for approval within 30 days of receipt.
4. Software is installed and configured, with assistance from DIT, in appropriate environment (e.g. development, test, production). Contingency plans and de-installation procedures and software are provided by Contractor and approved The State of Michigan Project Manager with assistance from the State.

5. Final software testing is successfully performed in the State of Michigan Infrastructure without any compatibility issues. Software is accessible by central, remote and external users.
6. The State will review test software, data and results within 30 days of receipt. Approvals will be written and signed by the State of Michigan Project Manager with assistance from other State agencies. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit test software, data and results for approval within 30 days of receipt.
7. The State will review software license agreements within 30 days of receipt. Approvals will be written and signed by the State of Michigan Project Manager with assistance from DIT. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit license agreement for approval within 30 days of receipt.
8. Software source code, where applicable, is reviewed by the State within 30 days of receipt for readability, structure, and configuration management. Approvals will be written and signed by the State of Michigan Project Manager with assistance from DIT. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit source code for approval within 30 days of receipt.

C. Service Deliverables

Services include, but are not limited to training, software development, data migration, help desk and support.

1. The services will be accepted in accordance with the requirements of this Contract.
2. The State will review a 'Request for Approval of Services' within 30 days of completion or implementation. Approvals will be written and signed by the State of Michigan Project Manager with assistance from DMB and DIT. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit a 'Request for Approval of Services' for approval within 30 days of receipt.
3. The State will review migrated and configured data within 30 days of completion. Approvals will be written and signed by the State of Michigan Project Manager with assistance from State Agencies. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit a request for approval within 30 days of receipt.
4. The State staff are trained sufficiently to operate and utilize the system to perform their required daily functions, and supplied with the proper tools and documentation to support, upgrade, monitor, operate and configure the application in accordance with the requirements of this Contract.
5. The Contractor has the tools and connectivity installed, in compliance with DIT standards, to properly support and monitor the application.

1.052 Final Acceptance – Deleted/Not Applicable

1.060 Proposal Pricing

1.061 Proposal Pricing

See Attachment A for detailed pricing information.

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/dmb 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 Holdback – Deleted/Not Applicable

1.070 Additional Requirements – Deleted/Not Applicable

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of three years and nine months beginning December 17, 2008 through June 30, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Renewal(s)

This 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 shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall 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 this Contract, until Contractor is notified in writing that this 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 this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this 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.

2.006 Order of Precedence

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

(b) In the event of any inconsistency between the terms of the Contract (including Article 1, Article 2, and Attachment B) and Attachment B or its Addendum, the terms of the Contract (Article 1, Article 2, and Attachment A) will take precedence.

2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and DMB – Office of Financial Management (OFM) (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Melissa Castro, CPPB
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: castrom@michigan.gov
Phone: 517-373-1080

2.022 Contract Compliance Inspector (CCI)

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Department 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 this 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 DMB Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Ken Mitchell
Department of Management & Budget
Financial Services
mitchellk@michigan.gov
517-241-4121

2.023 Project Manager – Deleted/Not Applicable

2.024 Change Requests

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

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

Change Requests:

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

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, 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.

State:

State of Michigan
Purchasing Operations
Attention: Melissa Castro
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:

Bank of America
Attn: Joseph Kiss
4815 State Street, Suite B
Saginaw, MI 48603

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 this 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 must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be 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 will 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 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 shall 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

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

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. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

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 this 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

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

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 this Contract will 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 this Contract shall 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 this Contract is subsequently reduced by the State, the parties shall 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 this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

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

(b) Each Contractor invoice will 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 will 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 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

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 shall 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 this 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 this 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 this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall 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, including the 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 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 this 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 this 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 this 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 Contract Compliance Inspector 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 will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

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

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor agrees to 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 will 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 this 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 agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider 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 shall have 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 this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have 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 shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall 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 shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this 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 will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall 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 this Contract shall not relieve Contractor of any obligations or performance required under this Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall 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 shall 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 – Deleted/Not Applicable

2.090 Security

2.091 Background Checks

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor will contact the DMB immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor will continue to treat cardholder data as confidential upon contract termination.

The Contractor will provide the DMB documentation showing PCI Data Security certification has been achieved. The Contractor will advise the DMB of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential

Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed – Deleted/Not Applicable

2.112 Examination of Records

For seven years after the Contractor provides any work under this 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 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. 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.

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, and 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 will 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 any deficiencies, concerns, and/or 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.

2.120 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 this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this 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 this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this 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 this 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 this 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) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports,

other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability – Deleted/Not Applicable

2.123 Warranty of Fitness for a Particular Purpose – Deleted/Not Applicable

2.124 Warranty of Title – Deleted/Not Applicable

2.125 Equipment Warranty – Deleted/Not Applicable

2.126 Equipment to be New – Deleted/Not Applicable

2.127 Prohibited Products – Deleted/Not Applicable

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverage's provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A- or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See www.michigan.gov/dleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the 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 policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. 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 in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this 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(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, 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 coverages afforded under the policies WILL 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 Director of Purchasing Operations, Department of Management and Budget. 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 this 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 this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. The Contractor reserves the right to obtain all insurance required in this Contract through a program of self-insurance.

2.140 Indemnification – Deleted/Not Applicable

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

2.152 Termination for Cause

(a) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this 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 this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this 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 this 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 this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this 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 this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this 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 this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this 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 this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this 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 this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written 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 this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this 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 this 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 only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

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

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

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations

under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this 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 this 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 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this 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 will 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 this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will 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 this Contract. This must include any documentation being used by the Contractor to perform the Services under this 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 this 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 will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will 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 be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, 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 will be honored in order that each of the parties may be fully advised of the other's position.

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

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, 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 will 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 the 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 either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

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 shall 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. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy,

then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor must make the following notifications in writing:
- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

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

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

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

2.240 Performance – Deleted/Not Applicable

2.250 Approval of Deliverables

2.251 Delivery Responsibilities – Deleted/Not Applicable

2.252 Delivery of Deliverables – Deleted/Not Applicable

2.253 Testing

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

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

2.254 Approval of Deliverables, In General

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

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

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

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

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

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

2.255 Process for Approval of Written Deliverables – Deleted/Not Applicable

2.256 Process for Approval of Services – Deleted/Not Applicable

2.257 Process for Approval of Physical Deliverables – Deleted/Not Applicable

2.258 Final Acceptance

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

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights

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

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will 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 will 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 will 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 will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

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/ditservice>. 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 Extended Purchasing

2.281 MIDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment to these local governmental agencies at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices will be submitted to and pay the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.282 State Employee Purchases – Deleted/Not Applicable

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 or disposal of which is regulated by the 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 the 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 (a) the material is a Hazardous Material that may present a substantial danger, and (b) 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, 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, disposal of, 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 shall 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 this Contract.

Environmental Performance:

Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this Contract. The Contractor's programs shall 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.).

Attachment A, Price Proposal

REBATE DEFINITIONS:

Capitalized terms, which are not defined in this Attachment A have the meaning ascribed in Article 1, and/or Article 2, Attachment B (including Addendum) to which this Attachment A is attached.

"Calculation Period" means, initially, the 12-month period commencing sixty (60) days after Bank of America receives a fully executed original of this Agreement and thereafter, each subsequent 12-month period.

"Cycle Days" means the number of days from the start of the billing period to the statement date.

"Grace Days" means the number of days from the statement date that payment is due.

"Large Ticket Interchange Transactions" means certain transactions which, based upon the type of merchant and/or transaction dollar amount, are subject to a Visa or MasterCard large ticket interchange program, as determined by and amended by Visa and MasterCard from time to time.

"Rebate Multiplier" means the multiplier corresponding to the Standard Transaction Volume and Cycle and Grace Days as set forth in the Standard Transactions Rebate Multiplier Table, and the multiplier corresponding to the Large Ticket Interchange Transaction Volume and Cycle and Grace Days set forth in the Large Ticket Interchange Transactions Rebate Multiplier Table below.

"Standard Transactions" means the Transaction Volume not meeting the criteria for Large Ticket Interchange Transactions.

"Total Credit Losses" means, for any Calculation Period, the sum of (i) Bank of America's credit losses on the Accounts for the Calculation Period and (ii) Bank of America's credit losses on the Accounts for any previous Calculation Period which have not been applied against any rebate payable under this Agreement.

"Transaction Volume" means, for any Calculation Period, the total dollar amount of purchase transactions made with the Cards during the Calculation Period, less the total dollar amount of: returned purchases, credit adjustments, Transactions resulting from Unauthorized Use, and disputed charges. Cash advances and Convenience Checks are not included in Transaction Volume.

REBATE CONDITIONS:

The program must meet the following conditions in order to qualify for a rebate:

- (iv) During the Calculation Period, Company and Participant pay Bank of America the total amount of the new balance shown as due on each Billing Statement on or before the Payment Due Date;
- (v) Neither Company nor Participant has breached any obligation, covenant, representation or warranty contained in this Agreement;
- (vi) For the Calculation Period, and Transaction Volume is at least \$1,000,000.00.

REBATE CALCULATION AND PAYMENT:

In the event that all of the above Rebate Conditions are met with respect to the Calculation Period, Bank of America shall pay a rebate to Company, which shall be calculated at the end of the Calculation Period in accordance with the respective Multiplier Tables for Standard and Large Ticket Interchange Transactions and using the following equation:

(Transaction Volume for Standard Transactions x Rebate Multiplier) + (Transaction Volume for Large Ticket Interchange Transactions x Rebate Multiplier) – Total Credit Losses

Payment of any rebate shall be made by ACH credit or other means determined by Bank of America, within 90 days following the end of the Calculation Period. No rebate shall be paid to any Participant.

Should one or more of the above Rebate Conditions not be met, Bank of America shall be under no obligation to pay any rebate, although Bank of America may, in its sole discretion, determine to pay a rebate in an amount determined by Bank of America. Bank of America's payment of a rebate in such circumstance shall in no way obligate Bank of America to pay a rebate with respect to any subsequent Calculation Period.

STANDARD TRANSACTIONS REBATE MULTIPLIER TABLE

State of Michigan 07/02/08 Annual Card Volume Tiers Excludes Large Ticket		Cycle days Grace days	14	14	30	30	30	30	
			3	7	3	7	14	20	
			REBATE BASIS POINTS						
\$1,000,000	\$4,999,999		92	88	85	81	74	67	
\$5,000,000	\$9,999,999		102	98	95	91	84	77	
\$10,000,000	\$14,999,999		112	108	105	101	94	87	
\$15,000,000	\$19,999,999		117	113	110	106	99	92	
\$20,000,000	\$24,999,999		122	118	115	111	104	97	
\$25,000,000	\$29,999,999		135	131	128	124	117	110	
\$30,000,000	\$34,999,999		136	132	129	125	118	111	
\$35,000,000	\$39,999,999		136.5	132.5	129.5	125.5	118.5	111.5	1
\$40,000,000	\$44,999,999		137	133	130	126	119	112	
\$45,000,000	\$49,999,999		137.5	133.5	130.5	126.5	119.5	112.5	1
\$50,000,000	\$54,999,999		138	134	131	127	120	113	
\$55,000,000	\$59,999,999		138.5	134.5	131.5	127.5	120.5	113.5	1
\$60,000,000	\$64,999,999		139	135	132	128	121	114	
\$65,000,000	\$69,999,999		139.5	135.5	132.5	128.5	121.5	114.5	1
\$70,000,000	\$74,999,999		140	136	133	129	122	115	
\$75,000,000	\$79,999,999		140.25	136.25	133.25	129.25	122.25	115.25	1
\$80,000,000	\$84,999,999		140.5	136.5	133.5	129.5	122.5	115.5	1
\$85,000,000	\$89,999,999		140.75	136.75	133.75	129.75	122.75	115.75	1
\$90,000,000	\$94,999,999		141	137	134	130	123	116	
\$95,000,000	\$99,999,999		141.25	137.25	134.25	130.25	123.25	116.25	1
\$100,000,000	\$104,999,999		141.5	137.5	134.5	130.5	123.5	116.5	1
\$105,000,000	\$109,999,999		141.75	137.75	134.75	130.75	123.75	116.75	1
\$110,000,000	\$114,999,999		142	138	135	131	124	117	
\$115,000,000	\$119,999,999		142.5	138.5	135.5	131.5	124.5	117.5	1
\$120,000,000	\$124,999,999		143	139	136	132	125	118	
\$130,000,000	\$134,999,999		144	140	137	133	126	119	
\$140,000,000	\$144,999,999		145	141	138	134	127	120	
\$150,000,000	\$154,999,999		146	142	139	135	128	121	
\$160,000,000	\$164,999,999		147	143	140	136	129	122	

\$170,000,000	\$174,999,999		148	144	141	137	130	123	
\$180,000,000	\$184,999,999		149	145	142	138	131	124	
\$190,000,000	\$194,999,999		150	146	143	139	132	125	
\$200,000,000	\$299,999,999		151	147	144	140	133	126	
\$210,000,000	\$209,999,999		152	148	145	141	134	127	
\$220,000,000	\$219,999,999		153	149	146	142	135	128	
\$230,000,000	\$229,999,999		154	150	147	143	136	129	
\$240,000,000	\$239,999,999		155	151	148	144	137	130	
\$300,000,000	+	-	156	152	149	145	138	131	

Large Ticket Interchange Qualified Transactions	Annual Volume	Cycle Days Grace Days	14	14	30	30	30	30	
			3	7	3	7	14	20	
						REBATE BASIS POINTS			
\$0	\$1,499,999		39	35	31	27	20	15	
\$1,500,000	\$4,999,999		49	45	41	37	30	25	
\$5,000,000	\$19,999,999		59	55	51	47	40	35	
\$20,000,000	+		64	60	56	52	45	40	

Bank of America is has enhanced the financial rebate offering with additional program incentive funds. Bonus incentives are in addition to the rebate offered above, and are intended to award achievement of volume goals. This bonus incentive is based on a 3-year commitment on the Bank of America Card program.

1) Bonus Incentive

Bank of America is will pay a bonus incentive of \$200,000.00 within 60 days of implementation of the Bank of America Card program. This bonus is in addition to the rebates noted above. This bonus incentive is contingent on year one transaction volume of \$30million. If the program fails to achieve the year 1 transaction volume requirement, then Company will pay back to Bank of America a proportional amount of the signing bonus incentive. For example, if Year 1 is 10% below the target transaction volume, then 10% of the bonus incentive will be repaid to Bank of America at the end of the first annual calculation period.

If Company terminates, or if the Bank terminates for cause, the program prior to completion of the 3-year Contract, a pro rated share of the bonus incentive must be repaid by the Company to the Bank within 45 days after said termination. Pro ration will occurs as follows: Company may retain 33%of the financial incentive paid to it for each completed year of said 3-year pricing term and must repay the balance to the Bank.

