

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

**CHANGE NOTICE NO. 5**  
to  
**CONTRACT NO. 071B8200101**  
between  
**THE STATE OF MICHIGAN**  
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Imagetrend, Inc. 20855 Kensington Blvd Lakeville, MN 55044	Tamara Bicknese	<a href="mailto:tbicknese@imagetrend.com">tbicknese@imagetrend.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(952) 469-1589	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Mark Lawrence	517-241-1640	<a href="mailto:lawrencem1@michigan.gov">lawrencem1@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Emergency Medical Services MEMSIS			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 1, 2008	March 31, 2011	3, 1 Year Options	March 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	March 31, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$85,840.00		\$762,520.00		
Effective immediately, this Contract is hereby exercising the third option year and is INCREASED by \$85,840.00. The new end date is March 31, 2014, per the attached Contractor Proposal and Exhibit A.				
All other terms, conditions, specifications, and pricing remain the same.				
Per vendor agreement, DTMB Procurement approval, and the approval of the State Administrative Board dated March 5, 2013.				

August 16<sup>th</sup>, 2012

Whitnie Zuker, IT Contract Liaison  
Michigan Department of Community Health  
DTMB/Agency Services DOH  
300 E. Michigan Ave., 2<sup>nd</sup> Fl.  
Lansing, MI 48933

RE: Contract 071B8200101 between the State of Michigan and ImageTrend, Inc.

Dear Ms. Zuker,

ImageTrend would like to thank the State of Michigan for their continued patronage and would like to acknowledge and accept the States request to extend the original contract. Per the original contract and its Change Notice No.1 the contract period was April 1, 2008 through March 31, 2011. This contract identifies that the State of Michigan reserves the right to exercise three (3) one-year options.

ImageTrend accepts the State of Michigan's request to exercise the third optional year to the contract, extending the contract period to March 31, 2014. The terms and conditions of the original contract will remain the same. ImageTrend agrees to the renewal option with no increase in pricing, which is detailed on the attached Exhibit A, which outlines the ongoing support and hosting costs associated with the products acquired under this contract, EMS State Bridge, Visual Informatics (Data Mining), and Patient Registry (Trauma Bridge). We have also provided a contract amendment for signature, as well as the provided Statement of Work (SOW) included as Exhibit B.

ImageTrend looks forward to our continued relationship with the State of Michigan. We welcome any questions or concerns regarding this matter.

Best Regards,

*Tamara Bicknese*

Tamara Bicknese  
Business Process Coordinator

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



IMAGETREND INC.

P. 1/3

SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Change No. 5

This agreement (hereinafter referred to as this "Agreement") is made as of the date executed by the last of the parties named below"

**BETWEEN:** IMAGETREND, INC., a Minnesota corporation (hereinafter "Contractor")

**AND:** STATE OF MICHIGAN (hereinafter "State").

State and Contractor mutually agree to the following changes to the original Contract between the State of Michigan and ImageTrend, Inc. for Software Licensing and Related Services Agreement.

1. The purpose of this Amendment is for State to exercise the third optional year to the original contract.
2. The Amendment changes the previously-agreed-to ending date for the original Contract to March 31, 2014.
3. All other terms and conditions from the original contract remain the same.

**IN WITNESS WHEREOFF**, the parties have caused this Agreement to be duly executed as of the day and year last recorded.

APPROVED AS:

"STATE"

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

"IMAGETREND"

By: \_\_\_\_\_

Name: Michael J. McBrady

Title: President

Date: \_\_\_\_\_

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



**IMAGETREND** INC.

7.2/3

SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Change No. 5

Exhibit A – Ongoing Rates

Description	Qty	Price	Extended Price
EMS State Bridge Annual Support 4/01/2013-3/31/2014	1	\$29,440.00	\$29,440.00
EMS State Bridge Annual Hosting 4/01/2013-3/31/2014	1	\$20,400.00	\$20,400.00
Visual Informatics (Data Mining) Annual Support 4/01/2013-3/31/2014	1	\$9,600.00	\$9,600.00
Patient Registry (Trauma Bridge) Annual Support 4/01/2013-3/31/2014	1	\$19,200.00	\$19,200.00
Patient Registry (Trauma Bridge) Annual Hosting 4/01/2013-3/31/2014	1	\$7,200.00	\$7,200.00
Total for Year Ending March 31, 2014:			\$85,840.00

SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



**IMAGETREND** INC.

P. 3/3

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 24, 2012

CHANGE NOTICE NO. 4  
TO  
CONTRACT NO. 071B8200101  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Imagetrend, Inc.</b> <b>20855 Kensington Blvd</b> <b>Lakeville, MN 55044</b>  <a href="mailto:tbicknese@imagetrend.com">tbicknese@imagetrend.com</a>	TELEPHONE Tamara Bicknese <b>(952) 469-1589</b>
	CONTRACTOR NUMBER/MAIL ODE
	BUYER/CA (517) 241-1640 <b>Mark Lawrence</b>
Contract Compliance Inspector: Robin Shively <b>Emergency Medical Services MEMSIS</b>	
CONTRACT PERIOD: From: <b>April 1, 2008</b> To: <b>March 31, 2013</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

This contract is **INCREASED \$85,840.00** and Option year 2 is exercised and this Contract is **EXTENDED** to March 31, 2013 per the attached Contractor proposal and exhibits dated October 21, 2011. All other terms, conditions and specifications remain the same.

**AUTHORITY/REASON:**

Per agency and vendor agreement and approval of DTMB Procurement.

**INCREASE: \$85,840.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$676,680.00**

October 21, 2011

Whitnie Zuker, IT Contract Liaison  
Michigan Department of Community Health  
DTMB/Agency Services for DCH  
300 E. Michigan Ave., 2nd Fl.  
Lansing, MI 48933

RE: Contract 071B8200101 between the State of Michigan and ImageTrend, Inc.

Dear Ms. Zuker,

ImageTrend would like to thank the State of Michigan for their continued patronage and would like to acknowledge and accept the State's request to extend the original contract. Per the original contract and its Change Notice No. 1 the contract period was April 1, 2008 through March 31, 2011. This contract identifies that the State of Michigan reserves the right to exercise three (3) one-year options.

ImageTrend accepts the State of Michigan's request to exercise the second optional year to the original contract, extending the contract period to March 31, 2013. The terms and conditions of the original contract will remain the same. ImageTrend agrees to the renewal option with no increase in pricing, which is detailed on the attached Exhibit A, which outlines the ongoing support and hosting costs associated with the products acquired under this contract, EMS State Bridge, Visual Informatics (Data Mining), and Patient Registry (Trauma Bridge). We have also provided a contract amendment for signature, as well as the provided Statement of Work (SOW) included as Exhibit B.

ImageTrend looks forward to our continued relationship with the State of Michigan. We welcome any questions or concerns regarding this matter.

Best Regards,



Tamara Bicknese  
Business Process Coordinator

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



**IMAGETREND** INC.

# SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Change No. 4

This agreement (hereinafter referred to as this "Agreement") is made as of the date executed by the last of the parties named below:

**BETWEEN:** IMAGETREND, INC., a Minnesota corporation (hereinafter "Contractor")

**AND:** STATE OF MICHIGAN (hereinafter "State").

State and Contractor mutually agree to the following changes to the original Contract between the State of Michigan and ImageTrend, Inc. for Software Licensing and Related Services Agreement.

1. The purpose of this Amendment is for State to exercise the second optional year to the original contract.
2. The Amendment changes the previously-agreed-to ending date for the original Contract to March 31, 2013.
3. All other terms and conditions from the original contract remain the same.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the day and year first recorded.

APPROVED AS:

"STATE"

"IMAGETREND"

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Michael J. McBrady

Title: \_\_\_\_\_

President

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



**IMAGETREND** INC.

## SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Change No. 4

### Exhibit A – Ongoing Rates

Description	Qty	Price	Extended Price
EMS State Bridge Annual Support 04/01/2012-3/31/2013	1	\$29,440.00	\$29,440.00
EMS State Bridge Annual Hosting 04/01/2012-3/31/2013	1	\$20,400.00	\$20,400.00
Visual Informatics (Data Mining) Annual Support 04/01/2012-3/31/2013	1	\$9,600.00	\$9,600.00
Patient Registry (Trauma Bridge) Annual Support 04/01/2012-3/31/2013	1	\$19,200.00	\$19,200.00
Patient Registry (Trauma Bridge) Annual Hosting 04/01/2012-3/31/2013	1	\$7,200.00	\$7,200.00
<b>Total for Year Ending March 31, 2013:</b>			<b>\$85,840.00</b>

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL – 1.952.469.1589  
FAX – 1.952.469.5671  
WWW.IMAGFTREND.COM



**IMAGETREND** INC.

# SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Change No. 4

## Exhibit B – Statement of Work



### MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET IT SERVICES STATEMENT OF WORK

Project Title: Michigan Emergency Medical Services Info. System (MEMSIS)	Period of Coverage: 4/1/12-3/31/13
Requesting Department: Michigan Department of Community Health (DCH)	Date: 10/20/11
Agency Project Manager: Robin Shively	Phone: 517-241-3024
DTMB Project Manager: Alan Darling	Phone: 517-241-9149

**Brief Description of Services to be provided:**

Contract Change Notice for 071B8200101 to exercise option year two 4/1/12-3/31/13; procure ongoing maintenance/support and hosting.

**BACKGROUND:**

DTMB has contract (071B8200101) with Imagetrend, Inc to provide maintenance/support and hosting for Emergency Medical Services (EMS) Michigan Emergency Medical Services Information System (MEMSIS)State Bridge, Visual informatics/Data Mining, and Trauma Bridge for the Michigan Department of Community Health (MDCH).

The continued support of the EMS Information System is a requirement of Part 209 of PA 368 of 1978, as amended and administrative rules. The continued support of the Trauma Registry is necessary per the Statewide Trauma System Administrative Rules, R 325.13 Rule 10 (1), "collect & analyze trauma system data to evaluate the delivery of adult & pediatric trauma care, develop injury prevention strategies for all ages & provide resources for research and education.

If not procured the risk is failure to meet statutory requirements. Further, the lack of the ability to review and analyze current injuries occurring in Michigan would result in the inability to develop protocols and implement preventative measures. The overall result will be increases in traumatic and accidental deaths, increases in the loss of productive lives and millions spent in rehabilitation and recovery programs.

**PROJECT OBJECTIVE:**

Excercise second option year of Imagetrend, Inc., contract 071B8200101 to procure ongoing maintenance/support and hosting for Emergency Medical Services (EMS) Michigan Emergency Medical Services Information System (MEMSIS)State Bridge, Visual informatics/Data Mining, and Trauma Bridge.

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL – 1.952.469.1589  
FAX – 1.952.469.5671  
WWW.IMAGFTREND.COM



**IMAGETREND** INC.

**SCOPE OF WORK:**

Imagetrend, Inc. Contract. 071B8200101 will provide maintenance, support and hosting for the time period of 4/1/12-3/31/13.

**TASKS:**

Technical support is required to assist with the following tasks:  
Per Contract 071B8200101 Agreement.

**DELIVERABLES:**

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project are described in the current contract agreement 071B8200101.

**ACCEPTANCE CRITERIA:**

Software support fulfills the agreement for contract 071B8200101 as provided during the time period specified.

**PROJECT CONTROL AND REPORTS:**

A bi-weekly progress report must be submitted to the Agency and DTMB Project Managers throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:

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

**SPECIFIC DEPARTMENT STANDARDS:**

Agency standards, if any, in addition to DTMB standards:  
Per Contract 071B8200101 Agreement.

**PAYMENT SCHEDULE:**

Payment will be made on an all invoices must include the purchase order number basis. DTMB will pay CONTRACTOR upon receipt of properly completed invoices which shall be submitted to the billing address on the State issued purchase order not more often than monthly. DTMB Contracts area will coordinate obtaining Agency Project Manager and DTMB Project Manager approvals. All invoices should reflect actual work completed by payment date, and must be approved by the Agency Project Manager and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by the DTMB within forty-five (45) days after receipt of properly completed invoices.

**EXPENSES:**

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc.

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.5671  
WWW.IMAGETREND.COM



**IMAGETREND** INC

**PROJECT CONTACTS:**

The designated Agency Project Manager is:

Robin Shively  
Department of Community Health  
EMS & Trauma Systems Section  
Capitol View, 6<sup>th</sup> Floor  
201 Townsend  
Lansing, MI 48913  
517-241-3024  
517-241-9458  
rmshivl@michigan.gov

The designated DTMB Project Manager is:

Alan Darling  
DTMB/Agency Services for DCH  
Systems Development  
Chandler Plaza/ 1<sup>st</sup> Floor  
300 East Michigan Ave.  
Lansing, MI 48933  
517-241-9149  
517-241-7743  
DarlingA@michigan.gov

**AGENCY RESPONSIBILITIES:**

Per Contract 071B8200101 Agreement.

**LOCATION OF WHERE THE WORK IS TO BE PERFORMED:**

Per Contract 071B8200101 Agreement.

**EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:**

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.  
No overtime will be permitted.

20855 KENSINGTON BLVD  
LAKEVILLE, MN 55044  
TEL - 1.952.469.1589  
FAX - 1.952.469.3671  
WWW.IMAGETREND.COM



**IMAGETREND** INC.

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

June 23, 2011

CHANGE NOTICE NO. 3  
TO  
CONTRACT NO. 071B8200101  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Imagetrend, Inc.</b> <b>20855 Kensington Blvd</b> <b>Lakeville, MN 55044</b>  <a href="mailto:tbicknese@imagetrend.com">tbicknese@imagetrend.com</a>		TELEPHONE Tamara Bicknese <b>(952) 469-1589</b>		
		CONTRACTOR NUMBER/MAIL ODE		
		BUYER/CA (517) 241-1640 <b>Mark Lawrence</b>		
Contract Compliance Inspector: Sara Williams <b>Emergency Medical Services MEMSIS</b>				
CONTRACT PERIOD: From: <b>April 1, 2008</b> To: <b>March 31, 2012</b>				
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>			
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>			
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>				
MISCELLANEOUS INFORMATION:				

**NATURE OF CHANGE(S):**

Effective April 1, 2011, this contract is **INCREASED \$85,840.00**. Pricing is per the attached document, "On-Going Rates". Option year 1 is exercised. The contract end date is **CHANGED** to March 31, 2012. Please also note that the buyer has been **CHANGED** to Mark Lawrence. All other terms, conditions and specifications remain the same.

**AUTHORITY/REASON:**

Per agency and vendor agreement and approval of both DTMB Purchasing Operations and the State Administrative Board on June 21, 2011.

**INCREASE: \$85,840.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$590,840.00**

FOR THE CONTRACTOR:

Imagetrend, Inc.
Firm Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date

FOR THE STATE:

Signature
Mark Lawrence, Buyer
Name/Title
IT Division
Division
Date

## SOFTWARE LICENSING AND RELATED SERVICES AGREEMENT

Contract No. 071B8200101 Amendment 2

### Exhibit A – Ongoing Rates

Description	Qty	Price	Extended Price
EMS State Bridge Annual Support 04/01/2011-03/31/2012	1	\$29,440.00	\$29,440.00
EMS State Bridge Annual Hosting 04/01/2011-03/31/2012	1	\$20,400.00	\$20,400.00
Visual Informatics (Data Mining) Annual Support 4/01/2011-03/31/2012	1	\$9,600.00	\$9,600.00
Patient Registry (Trauma Bridge) Annual Support 04/01/2011-03/31/2012	1	\$19,200.00	\$19,200.00
Patient Registry (Trauma Bridge) Annual Hosting 04/01/2011-03/31/2012	1	\$7,200.00	\$7,200.00
Total for Year Ending March 31, 2012:			\$85,840.00

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 19, 2010

CHANGE NOTICE NO. 2  
TO  
CONTRACT NO. 071B8200101  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Imagetrend, Inc.</b> <b>20855 Kensington Blvd</b> <b>Lakeville, MN 55044</b>  <a href="mailto:RRoedder@Imagetrend.com">RRoedder@Imagetrend.com</a>	TELEPHONE Nick Oskey <b>(952) 469-1589</b>
	CONTRACTOR NUMBER/MAIL ODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Sara Williams <b>Emergency Medical Services MEMSIS</b>	
CONTRACT PERIOD: From: <b>April 1, 2008</b> To: <b>March 31, 2011</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately, this contract is INCREASED \$135,000. All other terms, conditions and specifications remain the same.

**AUTHORITY/REASON:**

Per agency and vendor agreement and approval of the State Administrative Board on January 19, 2010.

**INCREASE: \$135,000.00**

**REVISED ESTIMATED CONTRACT VALUE: \$505,000.00**

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 12, 2009

CHANGE NOTICE NO. 1  
TO  
CONTRACT NO. 071B8200101  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Imagetrend, Inc.</b> <b>20855 Kensington Blvd</b> <b>Lakeville, MN 55044</b>  <a href="mailto:RRoedder@Imagetrend.com">RRoedder@Imagetrend.com</a>	TELEPHONE Nick Oskey <b>(952) 469-1589</b>
	CONTRACTOR NUMBER/MAIL ODE
	BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Sara Williams <b>Emergency Medical Services MEMSIS</b>	
CONTRACT PERIOD: From: <b>April 1, 2008</b> To: <b>March 31, 2011</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

The purpose of this change notice is to correct the contract period as it appears on the contract cover page, Form No. DMB 234 (Rev. 1/96). The State Administrative Board approved the request for a three-year contract with three one-year renewal options. As per the contract, the begin date commences the date the last required signature is obtained to make the contract enforceable and the cover page should read as follows:  
Contract Period: From: April 1, 2008. to: March 31, 2011.

**AUTHORITY/REASON:**

Per agency and vendor agreement and approval of the State Administrative Board on December 18, 2008.

**ESTIMATED CONTRACT VALUE REMAINS: \$370,000.00**

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. 071B8200101  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>Imagetrend, Inc.</b> <b>20855 Kensington Blvd</b> <b>Lakeville, MN 55044</b>		TELEPHONE Nick Oskey <b>(952) 469-1589</b>
		CONTRACTOR NUMBER/MAIL ODE
		BUYER/CA (517) 373-3993 <b>Dale N. Reif</b>
Contract Compliance Inspector: Sara Williams <b>Emergency Medical Services MEMSIS</b>		
CONTRACT PERIOD: From: <b>February 11, 2008</b> To: <b>February 10, 2009</b>		
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #071I7200286, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>		
<b>Estimated Contract Value: \$370,000.00</b>		

All terms and conditions of the invitation to bid are made a part hereof.

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
<u>Imagetrend, Inc.</u> Firm Name	<u>Signature</u> Dale N Reif, Buyer
<u>Authorized Agent Signature</u>	<u>Name/Title</u> IT Division
<u>Authorized Agent (Print or Type)</u>	<u>Division</u>
<u>Date</u>	<u>Date</u>



**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Purchasing Operations**  
Information Technology Division  
Stevens T. Mason Building  
530 West Allegan Street  
P.O. Box 30026  
Lansing, MI 48909

Buyer Name: Dale N. Reif  
Telephone Number: (517) 373-3993  
E-Mail Address: reifd@michigan.gov

Contract Number 071B8200101

Michigan Emergency Medical Services Information System - MEMSIS  
Michigan Department of Community Health  
Michigan Department of Information Technology



## Table of Contents

Article 1 – Statement of Work (SOW).....	1
1.0 Project Identification.....	1
1.001 Project Request.....	1
1.002 Background.....	1
1.1 Scope of Work and Deliverables.....	1
1.101 In Scope.....	1
1.102 Out of Scope.....	2
1.103 Environment.....	2
1.104 Work and Deliverables.....	2
1.2 Roles and Responsibilities.....	8
1.201 Contractor Staff, Roles, And Responsibilities.....	8
1.202 State Staff, Roles, And Responsibilities.....	9
1.203 Other Roles And Responsibilities - reserved.....	9
1.3 Project Plan.....	9
1.301 Project Plan Management.....	9
1.302 Reports.....	9
1.4 Project Management.....	9
1.401 Issue Management.....	9
1.402 Risk Management.....	11
1.403 Change Management.....	12
1.5 Acceptance.....	13
1.501 Criteria.....	13
1.402 Final Acceptance.....	13
1.6 Compensation and Payment.....	13
1.601 Compensation And Payment.....	13
1.7 Additional Terms and Conditions Specific to this SOW.....	14
1.701 Additional Terms And Conditions Specific To This Sow - Reserved.....	14
Article 2 – General Terms and Conditions.....	15
2.010 Contract Structure and Administration.....	15
2.011 Definitions.....	15
2.012 Attachments and Exhibits.....	15
2.013 Statements of Work.....	15
2.014 Issuing Office.....	16
2.015 Contract Compliance Inspector.....	16
2.020 Contract Objectives/Scope/Background.....	17
2.021 Background.....	17
2.022 Purpose.....	17
2.023 Objectives and Scope.....	17
2.024 Interpretation.....	17
2.025 Form, Function and Utility.....	17
2.030 Legal Effect and Term.....	17
2.031 Legal Effect.....	17
2.032 Contract Term.....	18
2.040 Contractor Personnel.....	18
2.041 Contractor Personnel.....	18
2.042 Contractor Identification.....	20
2.043 Cooperation with Third Parties.....	20
2.044 Subcontracting by Contractor.....	20
2.045 Contractor Responsibility for Personnel.....	21
2.050 State Standards.....	21
2.051 Existing Technology Standards.....	21
2.052 PM Methodology Standards.....	21
2.053 Adherence to Portal Technology Tools - reserved.....	21



2.054	Acceptable Use Policy .....	21
2.060	Deliverables .....	21
2.061	Ordering .....	21
2.062	Software .....	22
2.063	Hardware.....	22
2.064	Equipment to be New and Prohibited Products .....	22
2.070	Performance.....	22
2.071	Performance, In General.....	22
2.072	Time of Performance.....	22
2.073	Liquidated Damages - reserved .....	23
2.074	Bankruptcy .....	23
2.075	Time is of the Essence.....	23
2.080	Delivery and Acceptance of Deliverables.....	24
2.081	Delivery Responsibilities .....	24
2.082	Delivery of Deliverables .....	24
2.083	Testing .....	24
2.084	Approval of Deliverables, In General .....	24
2.085	Process For Approval of Written Deliverables .....	25
2.086	Process for Approval of Services .....	26
2.087	Process for Approval of Physical Deliverables.....	26
2.088	Final Acceptance.....	26
2.090	Financial.....	26
2.091	Pricing .....	26
2.092	Invoicing and Payment Procedures and Terms .....	27
2.093	State Funding Obligation.....	28
2.094	Holdback .....	28
2.095	Electronic Payment Availability .....	28
2.100	Contract Management.....	28
2.101	Contract Management Responsibility .....	28
2.102	Problem and Contract Management Procedures.....	28
2.104	System Changes.....	29
2.105	Reserved.....	29
2.106	Change Requests .....	29
2.110	Records and Inspections.....	30
2.111	Records and Inspections.....	30
2.112	Errors .....	31
2.120	State Responsibilities.....	31
2.121	State Performance Obligations .....	31
2.130	Security .....	31
2.131	Background Checks .....	31
2.140	Reserved.....	32
2.150	Confidentiality.....	32
2.151	Freedom of Information.....	32
2.152	Confidentiality.....	32
2.153	Protection of Confidential Information .....	32
2.154	Exclusions.....	32
2.155	No Implied Rights.....	33
2.156	Remedies.....	33
2.157	Security Breach Notification .....	33
2.158	Survival .....	33
2.159	Destruction of Confidential Information .....	33
2.160	Proprietary Rights .....	33
2.163	Rights in Data.....	34
2.164	Ownership of Materials .....	35
2.165	Standard Software .....	35



2.166	Pre-existing Materials for Custom Software Deliverables .....	35
2.167	General Skills .....	35
2.170	Warranties And Representations .....	35
2.171	Warranties and Representations.....	35
2.175	Standard Warranties .....	38
2.176	Consequences For Breach .....	38
2.180	Insurance .....	38
2.181	Liability Insurance .....	38
2.190	Indemnification .....	41
2.191	Indemnification .....	41
2.192	Continuation of Indemnification Obligations .....	42
2.193	Indemnification Procedures.....	42
2.200	Limits of Liability and Excusable Failure .....	42
2.201	Limits of Liability.....	42
2.202	Excusable Failure.....	43
2.203	Disaster Recovery .....	43
2.210	Termination/Cancellation by the State .....	44
2.211	Termination for Cause.....	44
2.212	Termination for Convenience .....	44
2.213	Non-Appropriation .....	44
2.214	Criminal Conviction .....	45
2.216	Rights and Obligations Upon Termination .....	45
2.217	Reservation of Rights.....	46
2.218	Contractor Transition Responsibilities.....	46
2.219	State Transition Responsibilities .....	46
2.220	Termination by Contractor.....	47
2.221	Termination by Contractor.....	47
2.230	Stop Work .....	47
2.231	Stop Work Orders .....	47
2.232	Cancellation or Expiration of Stop Work Order .....	47
2.233	Allowance of Contractor Costs.....	47
2.240	Reserved.....	47
2.250	Dispute Resolution .....	47
2.251	In General .....	47
2.252	Informal Dispute Resolution .....	48
2.253	Injunctive Relief.....	48
2.254	Continued Performance .....	48
2.260	Federal and State Contract Requirements.....	48
2.261	Nondiscrimination.....	48
2.262	Unfair Labor Practices.....	49
2.263	Workplace Safety and Discriminatory Harassment.....	49
2.270	Litigation.....	49
2.271	Disclosure of Litigation.....	49
2.272	Governing Law .....	50
2.273	Compliance with Laws .....	50
2.274	Jurisdiction .....	50
2.280	Environmental Provision .....	50
2.281	Environmental Provision .....	50
2.290	General .....	51
2.291	Amendments .....	51
2.292	Assignment .....	51
2.293	Entire Contract; Order of Precedence.....	51
2.294	Headings .....	51
2.295	Relationship of the Parties (Independent Contractor Relationship) .....	52
2.296	Notices .....	52



2.297	Media Releases and Contract Distribution .....	52
2.298	Reformation and Severability .....	52
2.299	Consents and Approvals .....	53
2.300	No Waiver of Default .....	53
2.301	Survival .....	53
2.302	Covenant of Good Faith .....	53
2.303	Permits .....	53
2.304	Website Incorporation .....	53
2.305	Taxes .....	53
2.306	Prevailing Wage .....	53
2.307	Call Center Disclosure .....	54
2.308	Future Bidding Preclusion .....	54
2.310	Reserved .....	54
2.320	Extended Purchasing .....	54
2.321	MiDEAL .....	54
2.330	Federal Grant Requirements .....	54
2.331	Federal Grant Requirements .....	54
	Article 1, Attachment A - Payment Schedule .....	55
	Article 1, Attachment B - Organizational Chart, including Key Personnel .....	56
	Article 1, Attachment C - Labor Rates .....	57
	Article 1, Attachment D - Deliverables .....	58
	Article 1, Attachment E - Project Plan .....	59
	Article 1, Attachment F - Service Level Agreement .....	60
	Article 1 Attachment G – Standard Report List .....	60
	Article 1 Attachment G – Standard Report List .....	61
	Article 1, Attachment H – Implementation Plan .....	63
	Exhibit A - Approved Subcontractors .....	63
	Exhibit A - Approved Subcontractors .....	64
	Exhibit B - Approved Hardware .....	65
	Exhibit C - Approved Software .....	66
	Exhibit D - Binding Commitments .....	67



Table of Acronyms:	
COB	Continuation of Business
CODES	Crash Outcomes Data Evaluation Systems
COTS	Commercial Off The Shelf
EMS	Emergency Medical Services
HIPAA	The Health Insurance Portability and Accountability Act of 1996
Level 1 Support	<p>Technical support with respect to problem support responsibilities:</p> <ol style="list-style-type: none"> <li>1. receiving initial calls from Internet users of Content who call to report problems;</li> <li>2. documenting all actions in the call record;</li> <li>3. determining whether reported problems are related to State Components or to the Services; and</li> <li>4. transferring problems related to the Services that could not be resolved by the State Technical Support Team to the IBM Customer Care Center.</li> </ol>
Level 2 Support	<p>Technical support with respect to problem support responsibilities:</p> <ol style="list-style-type: none"> <li>1. receiving and attempting to respond to problems related to the Services that could not be resolved by the State Technical Support Team;</li> <li>2. documenting actions in the call record;</li> <li>3. calling your Technical Support Team for further information, if required;</li> <li>4. attempting to determine root cause, as required;</li> <li>5. working with IBM Contractors (as necessary) to attempt to resolve problems;</li> <li>6. contacting other support groups and organizations, as required;</li> <li>7. interfacing with other systems, networks and operating system environments personnel; and</li> <li>8. routing calls to other levels of support, as required.</li> </ol>
Level 3 Support	<p>Technical support with respect to problem support responsibilities:</p> <ol style="list-style-type: none"> <li>1. the on-site diagnosis and repair required to close the problem;</li> <li>2. documenting all actions in the call record;</li> <li>3. attempting to determine root cause, as required;</li> <li>4. working with IBM Contractors (as necessary) to attempt to resolve problems; and</li> <li>5. contacting other support groups or organizations, as required.</li> </ol>
MDCH	Michigan Department of Community Health, (aka DCH)
MDIT	Michigan Department of Information Technology
MEMSIS	Michigan Emergency Medical Services Information System
NEMSIS	National Emergency Medical Services Information System
NHTSA	National Highway Traffic Safety Administration
ODBC	<p>Open Data Base Connectivity. A database-programming interface from Microsoft that provides a common language for Windows applications to access databases on a network. ODBC is made up of the function calls programmers write into their applications and the ODBC drivers themselves.</p> <p>For client/server database systems such as Oracle and SQL Server, the ODBC driver provides links to their database engines to access the database. For desktop database systems such as Access and FoxPro, the ODBC drivers actually manipulate the data. ODBC supports SQL and non-SQL databases. Although the application always uses SQL to communicate with ODBC, ODBC will communicate with non-SQL databases in its native language.</p>

**Table of Acronyms:**

OLAP	OnLine Analytical Processing, a decision support software that allows the user to quickly analyze information that has been summarized into multidimensional views and hierarchies. OLAP tools are used to perform trend analysis on sales and financial information. They enable users to drill down into masses of sales statistics in order to isolate products that are the most volatile
OLAP cube	A multidimensional database that holds data more like a 3D spreadsheet rather than a relational database. The cube allows different views of the data to be quickly displayed. See OLAP and multidimensional views.
PCR	Patient Care Record
QA	Quality Assurance
RFP	Request for Proposal
SLA	Service Level Agreement
SOM	State of Michigan
TRACS	Trauma Registry of the American College of Surgeons
24-7	Twenty four hours per day and seven days per week



## **Article 1 – Statement of Work (SOW)**

### **1.0 Project Identification**

#### **1.001 Project Request**

The purpose of this Contract is to provide a, Commercial Off the Shelf Software (COTS), secure web based data collection system, which is certified NEMSIS Gold, for the statewide collection of pre-hospital patient care information. This project will provide a central database/server, as well as an offsite back-up server for redundant protection, for Emergency Medical Services records for the State of Michigan, which has the capacity to produce standard reports, conduct ad hoc analytical analysis, and import and export data to other data systems.

#### **1.002 Background**

##### ***DCH Emergency Medical Services Mission Statement:***

***To protect and improve the health and well being of Michigan citizens who require emergency medical services, through the administration of license requirements for EMS Operations and Vehicles, the oversight of local Medical Control Authorities and the development of regulatory policies and procedures which promote efficient program administration and safe care, treatment and transportation of the sick and injured.***

The Emergency Medical Services Section is responsible for licensing over 800 life support agencies and over 2,400 life support vehicles. The Section approves local Medical Control Authorities (a hospital or group of hospitals) that provide community based pre-hospital emergency care oversight. Each county (or group of counties) is required to have such an Authority with the responsibility to establish policies, procedures and protocols focusing specifically on how pre-hospital emergency care will be carried out within their particular geographic area. The section also approves each of the 65 Authority's pre-hospital care policies, procedures and protocols prior to implementation. The section is responsible to ensure that all life support agencies are in compliance with the communications standards prescribed under the State Medical Communications (MEDCOM) Requirements.

Under part 209 of the Public Health Code, the Michigan Department of Community Health is required to collect Emergency Medical Services data on a statewide basis. The Department currently does not have a mechanism for the collection of this data. The Michigan Emergency Medical Services Information System (MEMSIS) is a new initiative aimed at creating a statewide EMS database, and the provision of data collection software for life support agencies is a key component of that initiative.

In addition to the stated goal for MEMSIS, it has become a project that is part of a larger statewide initiative to link data with other state agencies in an effort to make Michigan a national leader in highway safety. To that end, this project is being federally funded through NHTSA as a cooperative effort through the Office of Highway Safety Planning, the Traffic Records Coordinating Committee, and the Governors' Traffic Safety Advisory Council.

### **1.1 Scope of Work and Deliverables**

#### **1.101 In Scope**

The Contractor will host the MEMSIS application and provide services for the complete and successful implementation of MEMSIS. The Contractor will provide the functionality required for the State's business operations for the Michigan Department of Community Health, EMS & Trauma Systems Section.

The Contractor must provide a scalable MEMSIS COTS product, fully web-based, using open architecture and relational database management system that offers a field solution for data collection for high volume agencies without the time to enter data through a web portal. The system must be NEMSIS Gold compliant and currently operating successfully for an organization that is similar in size and scope as the system to be implemented in the State Of Michigan.



The Contractor will configure the application to incorporate the functionality required to support Michigan program requirements. The system must be able to process EMS data to and from all types of Michigan participants, i.e.; life support agency providers, medical control authorities, and hospitals.

In addition to implementing the MEMSIS application, the Contractor will provide:

1. Training for local agency and state program staff
2. Technical knowledge transfer to state staff
3. System and process documentation
4. Testing
5. Project management
6. Support services and system maintenance

### **1.102 Out of Scope**

The purpose of this Contract is to purchase an existing COTS system proven successful in other states and is NEMSIS gold compliant. Therefore, design, system development, customization, management consulting or re-engineering of processes is considered out of scope.

### **1.103 Environment**

The Contractor will comply with all Michigan Department of Information Technology (MDIT) requirements for security, web services, configuration, and system design. These can be found at

- DIT Policies and Standards: <http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html>
- Application Architecture: <http://www.michigan.gov/dit/0,1607,7-139-34305-107941--,00.html>
- Information Architecture: <http://www.michigan.gov/dit/0,1607,7-139-34305-107992--,00.html>
- Integration Architecture: <http://www.michigan.gov/dit/0,1607,7-139-34305-108216--,00.html>
- Infrastructure Architecture: <http://www.michigan.gov/dit/0,1607,7-139-34305-108229--,00.html>
- Procedures Index: <http://www.michigan.gov/dit/0,1607,7-139-34305-109932--,00.html>

### **1.104 Work and Deliverables**

Contractor shall provide deliverables, services and staff, and otherwise do all things necessary or incidental to provide the functionality required for the State's business operations.

#### **Project Planning:**

The planning process will begin with a kickoff meeting after Contract signing. The purpose of this meeting is to establish the groundwork for this venture, informing all parties of their roles and responsibilities. Guidelines will be laid for the infrastructure, data dictionary, data imports/exports and the exact details of the acceptance procedure will also be established. The planning phase should include at least the five milestone meetings listed here that will be pre-defined with evaluation criteria.

- Kickoff meeting for overall definition of objectives and timeline within thirty days after Contract signing..
- Project Plan - Within sixty days of Contract signing, the Contractor will provide a Project Plan to include schedule for satisfactory completion of all work and delivery of all services, a staffing plan and a training plan.
- Implementation meeting for initial acceptance on Contractor development servers and ensuing installation on either Contractor production servers for the pilot program and initial training of pilot members.
- Mid-Pilot Review of collected data and initial reporting with recommendations for refinement for the ensuing statewide initiative if necessary.
- Overall Pilot Program Review and acceptance.

**Hosting:** The Contractor shall provide and maintain a physical facility and equipment to host the web-based application at both the primary site and the back-up secondary site. The hosting facility will be located in downtown Minneapolis with every industry standard requirement for hosting such as power supply and power conditioning, normal and peak bandwidth capacity, security and fail over locations are all part of an overall strategy to provide the most reliable hosting facility possible.



Contractor will create a separate web-based training environment and procure and install additional hardware as needed to support the applications. An optional offsite redundancy is available in Chicago data center for additional fees.

**Data Integrity:** The Contractor will provide for data protection and establish and preserve a recovery plan. The applications will be backed up daily allowing for complete recovery of data to the most recent backup:

- Daily Scheduled Database and Application Backups.
- Daily Scheduled backup Success/Failure notification via cell-phone and email
- Daily Off-Site Tape backups

**System Architecture: The Contractor will implement EMS State Bridge to meet the requirements of this contract.** The Contractor's application is certified NEMSIS Gold compliant designed with open **scalable** architecture and modular functionality. Functional modules can be added at anytime and if functionality is desired that does not exist, it can be designed as a module. All system additions will be designed and tested on development servers to ensure desired functionality and full functional interfacing with existing functionality. This allows the State to review and perform final acceptance prior to going live.

EMS State Bridge is a pre-hospital emergency centralized web-based data collection, analysis and reporting system. EMS State Bridge integrates information across the entire emergency medical community, whether in the ambulance, the local station, or county or state offices. With the EMS State Bridge, ambulance services are able to satisfy reporting requirements easily, without major investment and without learning complex new technology.

The EMS State Bridge provides each service in the State with their own service view that gives them access to online run reporting, a run history, staff tracking, and reporting. The **security module** ensures that only authorized individuals have access to their data and they will only see the data from their own service. The multi-tiered **security module** incorporated into this application meets HIPAA guidelines. The reporting and auditing functions of the application's procedures allow for complete safeguarding and immediate notifications of any attempted breaches. This provides for data access only through assigned permissions and ensures that only those intended see their data and can access it for reporting.

**Electronic data entry** is provided via the Web or with the EMS Field Bridge. The data can originate from CAD, drivers' licenses and medical devices as well as quick-pick entries in the field as it happens. This data collection constitutes the incident level and can be posted to the data repository. The data is then available for querying, comparing, reporting or sharing. Intuitive data entry is accomplished with point-and-click techniques, graphical interfaces, default entries, dropdown boxes, etc.

### **HIPAA - Security Module**

Contractor's applications meet or exceed state and federal data privacy requirements and the HIPAA guidelines. Secure logins are an industry standard process and are part of the HIPAA guidelines for data protection. These are implemented throughout the application with the use of the hierarchical security access features of the security module, which provides the environment for controlling the access necessary to provide data protection. The application also provides for security breach notifications and audit trails.

The **data repository** is Microsoft SQL based and designed to support the expanding and dynamic requirements of the EMS community. These requirements include, but are not limited to, system-wide quality improvements identified through tracking of trends and procedures, benchmarking of specific indicators for compliance and public health issues, and a non-redundant data flow and sharing between concerned agencies. The NHTSA V2.2.1 uniform data set populates the database hosted at Contractor's secure facilities. All fields of the data set are available for reporting and exchanging with other agencies and applications.

### **Application Securities**

- **Secure User Login** - adheres to business standard practices for security to ensure only authorized access.
- **Password Encryption** – hash function implementation for sessions failing to successfully login after three tries.



- **Password Requirements** - Complexity Enforcement Validate Password for Case, Length and Composition
- **Login Expirations Validate** - force password changes on expired logins and restrict site access until new, valid password is created.
- **Page Access Checking** - to make sure user has properly logged in and is not entering the site via an external link.
- **SSL Server Certificate** – 128-bit encryption Security Certificate

#### Permissions Administration

- **Manage Users and Groups** - The application employs a hierarchical based password administration as a series of group policies to control application entry and level of access within the application. With the system administrator being the highest level of security, groups can be created at lower levels to encompass all other group needs.
- **Permissions and Rights** - Permission and rights are governed by the ability of what the user can see and do.  
Administrators can control and edit all the functions with their own level. Users have the ability to edit and view their own information.

#### Procedural Securities

- **Hosting Environment**
  - Triple redundant, high-speed Internet connections over fiber optics.
  - Power protection via an in-line 80kVa UPS with a 150 KW backup diesel generator
  - Temperature controlled
  - Waterless Fire Protection and Clean agent fire suppression
  - Secured site access
  - Steel Vault Doors, 21" concrete walls and ceiling
- **Database safety measures**  
The databases are on a private network with access control managed through the firewall permitting only authorized administrators or approved VPN access. Applications are monitored for availability and performance from multiple locations to ensure an accurate measure of current system health. Server administrators and development staff log slow application pages and long running database queries for analysis. Serious errors and performance degradation trigger email alerts, which are sent to support staff and cell, phone alerts to Contractor's 24x7 XTeam Support staff. Our X-Team support employees have VPN access to our production servers, to ensure accessibility and security, when accessing our servers from outside of our network.
- **Auditing**
  - The Site monitor audit trail tracks user information when accessing the secure portion of the application. IP address, User ID, date/time, browser information, along with information on each file accessed, is all tracked within a separate database, which is kept for a period of time for reporting purpose and audit trails.
  - Any security breaches are logged within our Project Management system for any HIPAA disclosures related to security breaches or information disclosures. If a security breach happens, the security module currently sends an email to our Director of Development and the Security Officer, who in turn notifies the MEMSIS Project Manager.
  - The **DataPort technology** uses XML, ODBC, Access and flat file format standards to ensure data exchange with a variety of applications and agencies. These are industry data exchange standards and incorporate data validation to ensure complete and accurate data exchange. Data exchange between systems is necessary to assuring completeness of the data set and to eliminate redundant entries throughout the community to the national level.

**Implementation:**

The implementation process consists of installation, testing and training performed by Contractor personnel. A small percentage of the process will be evaluating the existing systems for data import/export requirements, the NEMSIS data dictionary review and detailing the pilot program participation, training and final deployment of MEMSIS.

The review of the various systems with which this system will communicate involves the DataPort standard determination and the configuration mapping definitions for each. The desired EMS Data elements are already available in the EMS State Bridge system, which is NEMSIS gold compliant, however they should be reviewed in comparison to any unique fields MEMSIS may need.

The initial steps of finalization of specifications and acceptance criteria will be accomplished with Contractor personnel and will be subject to approval by the MEMSIS Project Manager. A task breakdown of a typical Implementation Plan follows:

- Analyze available infrastructure and 3-stage application environments, Development, Staging and Production
- Application Review of EMS State Bridge in comparison to MEMSIS requirements to include data set, system data exchange requirements, acceptance criteria and deployment timeframes
- Pilot program definition and participant selection criteria and training recommendations
- Initial acceptance on the development site to include all agreed upon specification and functions, data import from the existing system, trial imports from other systems, and exports to other applications
- Install on the production environment and demonstrate application with select pilot services
- Acceptance Testing via pilot program
- Begin Training Plan and schedule ongoing training courses
- Ongoing data collection with acceptance review
- Ongoing support

For this application there is only minimal development necessary to configure the system to additional requirements. This includes the implementation of data set changes to incorporate the State's specific fields, data integrations, configuration of all data exchanges required, the establishment of the pilot considerations and field deployment, including training.

**Data exchange set-up and testing**

Contractor's goal is to streamline data flow and maximize data usage. To accomplish this Contractor's team will thoroughly investigate the existing data and requirements and develop an integration plan for ongoing data communications between systems or a data conversion plan for those instances when a singular import of existing data into the new database is required. In either of these instances the file import method, DataPort technology and accurate mapping are the keys to success. These interfaces will be fully reviewed for implementation requirements, after which a detailed implementation and acceptance will be presented. Even in the case of standard interfaces, Contractor reserves the right to fully review all requirements, as it has been our experience that even standard products from vendors often have variances that may not be thoroughly documented.

Every environment has a unique set of interfaces that define the system and configurations. Therefore, not all interfaces may be available. If Contractor does not have a specific integration available, Contractor will prepare a detailed plan for successful implementation within reasonable timelines.



## **Other Integrations**

Contractor DataPort technology allows for the integration and exchange of data through multiple methods. This includes the transferring, processing and importing of data files. The DataPort is the gateway for how data is received and processed between applications. In order to effectively implement a robust data processing tool, the application must be able to collect data from disparate systems and in multiple formats to ensure the most widely acceptable and cost effective solution. Contractor DataPort Technology accomplishes all of this using the following methods.

- ODBC Compliant Data Source (MS Access, SQL, etc.)
- XML
- Formatted Data Files

The process of exporting/importing data involves a set of routines that function independently of one another to issue fast and accurate data transferring and importing, continually validating to ensure successful completion.

- Sending/Receiving
- Transferring
- Processing
- Importing (via one of the aforementioned methods)

The DataPort can be configured to assist in the retrieval of data, process and formatting, transferring, and finally importing, or any combination in-between. This can be accomplishing automatically by the system or with user interaction.

## **Pilot Program:**

The basis of the pilot program is the EMS State Bridge product, a turnkey solution. Contractor staff will implement all system modifications and enhancements that are desired by the State either initially or discovered during the pilot phase. It is recommended that select number of service providers (usually 12) be established by the State for the pilot phase of the data collection. This way the application can be ramped up in a controllable fashion, allowing for adequate time for personnel training and responsiveness to field level requests.

The recommended length for the pilot phase of data collection is three months, during which time training courses will continue to be held. At the end of this phase a status review and acceptance meeting will be held. The completion of the Pilot Program is a milestone for assessing the overall project success and the form of continuance that will be chosen. A final report will be collated to cover:

- Program Overview
- Program Objectives to include measurement of the critical criteria
  - Access and reliability in transmission, storage and sharing of pre-hospital data
  - Ability to support a local, regional and statewide EMS data collection system
  - Report generation
    - Potential for linking data with other state databases
    - User interface, entry times and acceptance
    - Final Program Evaluation

Although the application includes online data entry capabilities, Contractor will also provide EMS Field Bridges for use at the assigned services during the pilot phase. This will provide them with an opportunity to experience the added advantages of data collection using the Tablet PC with handwriting recognition and paper and pen imitation.

## **Deployment**

The deployment process for the MEMSIS System will be established after review of the pilot program. The MEMSIS implementation will begin with the setup of the EMS State Bridge as a development site on Contractor's development servers by Contractor personnel for the staged implementation of revisions as required by the State. These revisions will be reviewed with the State for acceptance.



Contractor personnel will install the system on Contractor's production servers and the first training courses will be held. The training courses will be detailed in the training plan. In conjunction with this the data collection phase can begin, which in itself is an ongoing test phase.

The only remaining step to **full system implementation** is the collection of data from all services. As the services are successively trained and equipped with either Internet access for online data entry or with EMS Field Bridges, the implementation process will continue under State personnel guidance until 100% data collection is achieved.

### **Testing**

Testing will include performance, stability, data integrity, and connectivity measures. Complete testing and acceptance criteria are mutually detailed during the kick-off meeting. Systems testing will include such things as user acceptance testing and a successful pilot phase. Revisions to mandatory data elements can be expected upon successful completion of pilot phase. In general the Contractor will perform the tasks with MEMSIS team members responsible for review, modification requests and acceptance. The field personnel, however, perform actual data collection during the pilot.

### **Upgrades/Updates and New Version Releases**

On the average, Contractor offers quarterly updates and new version releases to customers subscribing to the support agreements. The Contractor will notify the State in advance of these potential changes and schedule the upgrade at a mutually agreed time. The EMTUG Users' Group, comprised of field EMT's and Paramedics, has also been instrumental in providing insight for determining the necessity and value of requested product enhancements.

### **Support Services**

Contractor will provide both onsite and on-call support for their applications and hosting. Support includes technical diagnosis and fixes of technology issues involving software and hardware. Contractor has a broad range of technical support to their system and proposes to provide service in the areas of:

- Web Site Hosting and Support
- Web Application Development/Enhancement
- Database Administration/Support
- Project Management
- Systems Engineering/Architecture

Phone support is available Monday through Friday from 8:30 AM-5:30 PM CST. Contractor also provides onsite resolution for support of their applications either at their location in Lakeville, MN or at the State's location as the situation dictates.

**Ongoing Support:** Contractor will provide ongoing support for the term of the Contract. This includes continued attention to product performance and general maintenance. Contractor will provide multi-level technical support, based on level-two user support by accommodating both the general inquiries of the administrators and those of the system users. Administrators will have the ability to handle support for the system at the first level of contact while providing them the option to refer inquiries directly to the Contractor. Contractor's Support Team is available 24x7 at [support@Contractor.com](mailto:support@Contractor.com) as well as Monday through Friday from 8:30 am to 5:30 pm CST at **Toll Free: 1-888-469-7789 Phone: 952-469-1589**

### **Optional X-Team Support**

The X-Team is Contractor's premium support service. In addition to the standard services, Contractor offers optional after-hours and emergency support for our customers. If the State desires support after business hours or during weekends for everything from application support to hardware and technical emergencies, the X-Team is there to help provide fixes and a guaranteed four-hour turn time on service calls placed to them when this level of support has been contracted.

### **Training**

Contractor will conduct training sessions and deliver training manuals. The Training Curriculum will be reviewed with the State and customized to ensure that all courses are designed to address the State's specific



needs and will cover all functionalities of the EMS State Bridge. Contractor training for the EMS Systems to include:

- At least two MEMSIS staff in administration, support and maintenance of the system;
- Three (3) one-day classes in Michigan to train EMS and Hospital Training staff. These classes will be for a maximum of 25 persons and will be held about 6 months apart. MEMSIS will provide the training facilities and scheduling;
- Up-to-date and reproducible materials.
- EMS Field Bridge self-guided online tutorials.

Administration Training will focus on system administration and all the features associated with maintaining the application. Additional training will focus on data collection as well as reporting and data analysis.

Administration training will include the knowledge to provide Level 1 support and training to field personnel. This training session can easily accommodate 10 people and can be accomplished within an 8 -16-hour session. It is recommended that this training be accomplished at one time, since the interactive questions and assistance improves the learning process and establishes the communication links for the ongoing system usage. Contractor will hold this training at the location specified by the State. Advanced Administration Training courses will be conducted based upon requirements and after sufficient data has been collected.

### **Optional Field Bridge Training**

Field Training will cover the EMS Field Bridge. The typical EMS Field Bridge training session takes about 4-8 hours and can be performed by anyone that has attended a “train-the-trainer” session. The training will be reviewed and revised as necessary to incorporate Michigan’s specific requirements. Many of the EMS Field Bridges previously installed are successfully in use by individuals who have elected to bypass training. Contractor will be available for training or training guidance. Contractor also provides Webinar training to personnel from their desktops.

### **Documentation**

An EMS Field Bridge User and Administration Manuals and the EMS Service User and Administration Manuals are included in this Contract. All documentation will be provided as multiple hardcopies (as many copies as requested), electronic version and online PDF’s for downloading. Documentation is also updated and provided with each system upgrade, which includes a short form Version Release Notes and the fully updated user and administration manuals, if affected by the new changes.

### **System Reports**

The reports to be produced by the proposed system are defined in Article 1, Attachment G.

### **Transitioning**

In the event the Contractor ceases to provide hosting services, system maintenance support, or the State chooses to host the application on State servers, the Contractor agrees to provide a transition plan and transition assistance for transferring the software and data to the server(s) of State choosing.

## **1.2 Roles and Responsibilities**

### **1.201 Contractor Staff, Roles, And Responsibilities**

The Contractor will provide the technical staff for implementation, training, monitoring and evaluation reporting. An organizational chart is found in Article 1 – Attachment B.

All Contractor employees are subjected to background checks and are required to attend and successfully complete HIPAA training. The Contractor Project Management System gives us a facility to track any HIPAA Security Incidents or Information Disclosure Incidents for reporting purposes.

Only those certified Contractor employees that work with either hardware or software related to the specified application or project will access the data center and interact with our servers. These employees have worked with our hardware as part of our IT support staff or are part of our Implementation team as software developers. Authorization is granted from the management level.



## 1.202 State Staff, Roles, And Responsibilities

The MEMSIS MDCH Project Manager will be Robin Shivley, EMS and Trauma Systems Manager. The MEMSIS MDCH Project Manager will provide project guidance and direction to ensure that requirements are met, the budget is maintained, the schedule is adhered to, and that the State's expectations are delivered. The MEMSIS Project Manager will have the responsibility to establish, develop and maintain effective communications and positive working relationships with all levels of participants in the statewide data collection project, in order to promote joint efforts to build an effective statewide system.

Kevin Putman, State Data Manager, will assist the MEMSIS MDCH Project Manager in the overall implementation and oversight of the project.

The MEMSIS MDIT Project Manager will be Debbi Masters. The MEMSIS MDIT Project Manager will ensure compliance with MDIT standards and assign MDIT staff as needed.

## 1.203 Other Roles And Responsibilities - reserved

### 1.3 Project Plan

#### 1.301 Project Plan Management

Contractor will submit a proposed project plan to be finalized after Contract Effective Date. The proposed Project Plan will be used to create the Implementation Plan. The Contractor's Project Manager will be responsible for notifying the State's Project Manager of any proposed changes to the Project Plan.

The Project Plan/Implementation Guide must be delivered within 30 days after the Effective Date of the Contract. The project plan must reflect the tasks as identified in the Statement Of Work. Any changes to scope or schedule or budget must follow a Change Management process (Section 1.403), and it must be agreed upon and communicated to the MEMSIS Project Manager in writing explaining the reason for the change and the impact.

The Contractor must use MS Project as the automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any the Contractor's personnel spent performing Services under the Contract.

See Article 1, Attachment E for Contractor's Project Plan overview.

#### 1.302 Reports

**Progress Reports:** The Contractor is to provide written progress reports to the State's Project Manager on a time frame agreed upon. These reports are to include the information detailed below:

1. **Accomplishments:** Indicate what was worked on and what was completed during the current reporting period.
2. **Funds:** Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.
3. **Plans:** Anticipated efforts for the next two (2) weeks.
4. **Issues:** Any ongoing issues that require action or information from MDIT or MDCH in order to resolve.

### 1.4 Project Management

#### 1.401 Issue Management

##### **Status Meetings:**

The Contractor agrees to meet with the MEMSIS Project Manager in Lansing, Michigan for status meetings during the period from the execution of the Contract until testing is successfully completed. Such status meetings will be held at a time and a place as directed by the MEMSIS Project Manager although these meetings will not be more often than bi-weekly without the concurrence of the Contractor.



## **Problem Escalation and Resolution**

Contractor has support available for via telephone and/or electronic mail during Contractor's normal business hours (8:30 a.m. to 5:30 p.m. Central Standard Time, Monday through Friday, excluding holidays). The Project Manager on an ongoing basis will address operational issues. Senior Management will handle issues requiring further discussion and resolution.

**Support Log:** Information regarding outstanding problems, fixes, modifications and improvements will be available to the State electronically and published on a regular basis to a Project Support Log that will be made accessible to State staff.

**Malfunctions:** Contractor takes all efforts to correct malfunctions that are documented and reported by the State. Contractor acknowledges receipt of a malfunction report from the State within four business hours of receipt of the malfunction report. If the Malfunction reported prevents all useful work from being done, or disables major functions from being performed, Contractor will take immediate corrective action to remedy the reported issue. If the malfunction reported represents a non-mission critical issue, reasonable corrective action to remedy the malfunction within two business days will be taken. If the malfunction reported disables only non-essential functions, resulting in degraded operations, Contractor will take reasonable corrective action to remedy the reported malfunction within five business days.

## **Contractor's Project Management Process:**

Contractor Project Management is a comprehensive Web-based project management solution designed to facilitate accurate and relevant business decisions by connecting the people, information and ideas that are critical to the success of every project. The secure Web-based application means that all project participants can stay up to date on projects from any computer with an Internet connection. Team interaction and collaboration becomes more effective with integrated, intuitive tools that give real-time answers to the most important questions. Additional Microsoft Project and Team Foundation Server management tools are used.

## **Project Tracking**

Add, manage and modify project tasks and change orders quickly and easily. The Project List provides a summary of project status, and each project provides in-depth status information on project tasks and milestones.

Documents and resources associated with projects are stored, organized and controlled in a single centralized location. Documents, tasks, support issues and other items are linked for quick reference.

## **Time Tracking**

Easy-to-use timesheet management allows every user to quickly input timesheet data on a regular basis from any computer with an Internet connection. This data corresponds directly to project tasks and tracks against project timelines. In addition, timesheet detail is available for detail project audit reports.

## **Reporting**

Powerful and flexible reports deliver important information real-time. Get high-level, real-time data and reports on the status of any project or group of projects. Built-in reports provide point-and-click access to all project information, and customized reports give access to relevant data and issues unique to each individual project, as well as cross-project reporting.

Reports include:

- ⇒ **Project Audit Reports** – Includes general project information including project leader, performers involved, status, estimated hours and spent hours. Audit Reports include the project's task status as well, with detailed information of activities entered in by project members with the Timesheet.
- ⇒ **Project Billing Reports** – Project Billing Reports track project status based on Timesheet entries. These reports provide a breakdown of billable hours as well as Out Scope hours.



## Support and Issue management

Projects stay on track by anticipating and resolving unexpected issues quickly. Contractor Project Management allows project shareholders to identify, prioritize, assign and solve issues based on critical status. Progress is tracked for each issue on the way to resolution.

The Support/Issue queue displays the list of issues and can be sorted by age, ID, reporter, and subject. Graphical aging status keeps project members informed of pending issues, and helps keep the project on track. In addition, each issue upon completion is then marked as 'Closed' and saved for documentation.

In addition to tracking issues, the Support/Issue queue tracks HIPAA incidents. This in turn automatically notifies all designated parties for further action, which may be reporting or further security procedures, such as password changes.

### 1.402 Risk Management

A sample Contractor Risk Management Plan has been established based upon the National Institute of Standards and Technology "Risk Management Guide for Information Technology Systems". In this plan the Software Development Life Cycle (SDLC) is separated into 4 sections for risk identification. These risks are then classified as high, medium or low. A recommended control is identified as well. A chart detailing this follows the narrative. Further risk management evaluation can be included in the final project plan after Contract, if desired.

Since this response involves a product based solution the risks are minimized and readily identifiable, which is not the case in a project requiring full development services. The following risks have been identified:

- **HIPAA Compliance** must be clearly understood in its implications and who or what has the responsibility of compliancy. The hierarchical permissions generation provided in the Contractor EMS Service Bridge Enterprise Edition provides the environment for controlling the access necessary to provide data protection. Please refer to the security plan for further clarification.
- **Iowa Data Dictionary** presents a risk in that this must be reviewed and compared to the data dictionary provided with the EMS Service Bridge system. This is a low risk, since the necessary changes to the elements need to be merely identified and the hours needed for completion agreed upon and executed.
- **Cost** can be identified as a low risk, since a fixed price Contract with exact specifications for performance along with a product based solution, which is easily tested, provides a structure for exact cost estimates for funding.
- **Product Performance** is a manageable risk through detailed specifications and selection of a product based solution, which can be demonstrated prior to selection and also prototyped for the exact application, increasing solution confidence significantly.
- **Server Failure** is a confinable risk with Data Backup procedures and system redundancies. A staging server is recommended for application updates and changes, so that they can be tested prior to installation on the production server. A backup server is always recommended. Additionally if a hosted environment is selected then the backup server should be guaranteed and a geographically stable environment.
- **Improper System Access**, a high-risk occurrence, is managed through an effective security plan, which details and offers effective enforcement options.
- **System Updates** are a potential risk to system usage, but are containable if tested in a staged environment that is a complete copy of the production environment. Additionally complete pre-notification of all concerned parties is necessary, including training or a training plan if necessary.
- **Disk Drive Failure** is covered as a function of a server failure with appropriate backup and redundant servers and mirrored hard drives, but additionally the procedures should dictate that the drive is physically destructed in order to ensure data privacy.



SDLC Phase	Risk Identification	Risk Level	Recommended Controls
Initiation	HIPAA Compliance	Low	Understand requirement
			Hierarchical Permissions Generation
			Audit trails of system access
			Review and analysis including time assessment
			Standardize on NEMSIS Gold data set
			Project management functions for tracking and notifications; establish change order if required
Development / Acquisition	Cost	Low	Fixed price contract
			Complete specification
			Choose established product
			Pilot project as test
	Performance	Med	Defined Acceptance Criteria
			Detailed specifications and acceptance criteria
			Product based solution which can be tested
			Product based solution can be easily piloted and tested
			Comprehensive application usage and administrative training programs
Implementation	Server Failure	Low	Data Backup Policy and Procedure
			Server Redundancy
			Outsource Hosting and installations
Operation or Maintenance	Improper access	Med	Access Control
			Security Plan with enforcement options
	Servers down or inaccessible	Med	Hosting Environment geographically stable and sufficient backup plan
			Disaster recovery program (possible offsite or second server location)
	System Updates Affecting usage or database	Low	Thorough testing of update on staging server prior to production server installation
			Communication of update and training if needed

#### 1.403 Change Management

Contractor strives to completely assess all requirements and uses past implementation experience to ensure that project change requirements are minimized. Most changes are covered under support or version release policies. However, should a project change(s) be necessary, Contractor has standard project change initiation forms, which can be initiated by either the State or Contractor and encompasses all details of the change including description, specification, time estimates, as well as the required approval procedure. Once this has been approved either Contractor or the State will enter it into our project management application where its status can be easily monitored. It will also appear detailed on the status report.



## 1.5 Acceptance

### **1.501 Criteria**

The Contractor must use the acceptance process in this Contract, as outlined in the Terms and Conditions, Sections 2.080 through 2.087. Compliance with NEMIS Gold standard criteria, that data transmissions are securely encrypted according to HIPAA standards.

### **1.402 Final Acceptance**

Final Acceptance will occur after the application has been functioning in a production environment on a statewide basis for period as agreed upon by the State and the Contractor. Among other criteria, final acceptance will include:

1. Delivery of error free system that meets the SOM requirements.
2. Satisfactory completion of training
3. Delivery of operating manuals
4. Delivery of training manuals.
5. The system operates with acceptable lack of down-time

Complete testing and acceptance criteria will be mutually detailed during the kick-off meeting. In general, the tasks will be performed by the Contractor with the State responsible for review, modification requests and acceptance. The field personnel, however, perform actual data collection during the pilot. Final acceptance will occur when the agreed upon acceptance criteria have been met, training and documentation have been completed, and the system is deemed to have reached the "Go Live" status.

## 1.6 Compensation and Payment

### **1.601 Compensation And Payment**

The compensation for services delivered under the Contract will be made in accordance with the deliverables shown below and agreed upon by Contractor and the State:

#### **Software Solution**

1. Project Kick-off
  - a. Project Plan: Schedule for satisfactory completion of all work and delivery of all services
  - b. Final staffing plan
  - c. Training plan including outline of manuals
2. Procurement and Installation of hardware (if needed)
  - a. Servers/software and any ancillary equipment necessary to operate the primary hosting site.
  - b. Servers/software and any necessary ancillary equipment necessary to operate the secondary hosting site.
3. Installation of application software
  - a. Web Based Application at both sites
  - b. Creation of separate web-based training environment.
  - c. Delivery of operating manuals
    - i. System User Manuals.
    - ii. System Administrator Manuals.
    - iii. Any other Manuals associated with the administration of the software application.
4. Technical Services
  - a. Program and install interfaces
  - b. Develop and install any necessary configurations (The initial mandatory data elements will be provided upon awarding of the Contract.)
  - c. Completion of Contractor testing of all components (hardware and software)
5. Staffing

#### **Testing**

1. Testing of system
  - a. User acceptance testing
  - b. Successful pilot phase



- c. Revisions to mandatory data elements can be expected upon successful completion of pilot phase.

## **Training**

1. Completion of Training
  - a. Approval of training plan
  - b. Conduct training sessions
  - c. Delivery of training manuals
2. Statewide Implementation
  1. Statewide Implementation (Mandated Electronic Data Submissions). The warranty period for will be 90-days from completion of statewide implementation.

## **Ongoing Costs**

1. Ongoing Support and Maintenance
  - a. Acceptable level of technical support and response to requests for assistance.
  - b. Continuous system updates to meet ongoing NEMSIS requirements
2. Ongoing Hosting

The payment for the deliverables - Software Solution, Testing, and Training - will be made upon the delivery and acceptance of all components of each of the deliverables minus the holdback. Payment of the holdback amount will occur upon the completion and acceptance of the Statewide Implementation. Payment for Ongoing Costs will be monthly commencing after the 90-day warranty period.

### **1.7 Additional Terms and Conditions Specific to this SOW**

#### **1.701 Additional Terms And Conditions Specific To This Sow - Reserved**



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### **2.011 Definitions**

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “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. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “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.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “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. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “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.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### **2.012 Attachments and Exhibits**

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### **2.013 Statements of Work**

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;



- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
  - a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
  - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
  - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
  - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
  - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

## 2.014 Issuing Office

The Department of Management and Budget, Purchasing Operations and the Department of Community Health (collectively, including all other relevant State of Michigan departments and agencies, the "State") issue this Contract. 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:

Dale N. Reif  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
reifd@michigan.gov  
(517) 373-3993

## 2.015 Contract Compliance Inspector

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized 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 such Contract as that authority is retained by the Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Sara Williams  
Department of Information Technology  
Chandler Plaza  
300East Michigan Ave.  
Lansing, MI 48913  
Williamss11@michigan.gov  
(517) 335-1277

**2.016 Project Manager**

Robin Shivley  
MDCH Project Manager  
Department of Community Health  
EMS & Trauma Systems Section  
Capitol View Building, 6<sup>th</sup> floor  
201 Townsend Avenue  
Lansing, MI 48913  
rmshivl@michigan.gov  
(517) 241-3024

Debbi Masters  
MDIT Project Manager  
Department of Information Technology  
Chandler Plaza  
300 E. Michigan Ave  
Lansing, MI 48913  
[Mastersd@michigan.gov](mailto:Mastersd@michigan.gov)  
(517) 241-9149

**2.020 Contract Objectives/Scope/Background****2.021 Background**

Please refer to Section 1.002

**2.022 Purpose**

Please refer to Section 1.001

**2.023 Objectives and Scope**

Please refer to Section 1.101

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

**2.025 Form, Function and 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.

**2.030 Legal Effect and Term****2.031 Legal Effect**

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.



## 2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to 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.

## 2.033 Renewal(s)

The State reserves the right to exercise three (3) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

## 2.040 Contractor Personnel

### 2.041 Contractor Personnel

- (a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall 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 shall 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.
- (b) Key Personnel
  - (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.
  - (ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** 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.
  - (iii) 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. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
  - (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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 thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall 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 rights under **Section 2.210**.

- (v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least thirty (30) days prior to such Key Personnel's removal.

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

- (c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.
- (d) 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 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 personnel for the removed person shall 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 such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.
- (e) Staffing Levels.
  - (i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.
  - (ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.
- (f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an



acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

- (g) 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.

#### **2.042 Contractor Identification**

Contractor employees shall 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.

#### **2.043 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, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. 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 such requests for access.

#### **2.044 Subcontracting by Contractor**

- (a) 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.
- (b) 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 SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.
- (c) 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. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

- (d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.
- (e) 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.

## **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

### 2.050 State Standards

## **2.051 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/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

## **2.052 PM Methodology Standards**

The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. See the State's PMM website at <http://www.michigan.gov/projectmanagement>.

The Contractor shall use the State's PPM to manage this Contract. If the Contractor requires training on the PMM, those costs shall be the responsibility of the Contractor, unless otherwise stated.

## **2.053 Adherence to Portal Technology Tools - reserved**

## **2.054 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/0,1607,7-179-25781-73760--00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

### 2.060 Deliverables

## **2.061 Ordering**

- (a) Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.
- (b) DIT will continue to oversee the use of this Contract by End Users. DIT may, in writing, delegate to agencies the authority to submit requests for certain services directly to the Contractor. DIT may also designate, in writing, some services as non-delegated and require DIT review and approval before agency acquisition. DIT will use Contractor provided management reports and periodic random agency audits to monitor and administer contract usage for delegated services.



## 2.062 Software

**Exhibit C** lists the items of software the State is required to purchase for execution the Contract. The list in **Exhibit C** includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). **Exhibit C** also identifies certain items of software to be provided by the State.

## 2.063 Hardware

**Exhibit B** lists the items of hardware the State is required to purchase for execution the Contract. The list in **Exhibit B** includes all hardware required to complete the Contract and make the Deliverables operable; if any additional hardware is required in order for the Deliverables to meet the requirements of this Contract, such hardware shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Contract Change Notice). **Exhibit B** also identifies certain items of hardware to be provided by the State.

## 2.064 Equipment to be New and Prohibited Products

- (a) Equipment to be New: If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.
- (b) Prohibited Products: The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

## 2.070 Performance

### 2.071 Performance, In General

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

### 2.072 Time of Performance

- (a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.
- (c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.



## 2.073 Liquidated Damages - reserved

## 2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, 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 such Works in Process by whatever appropriate method the State may deem expedient. 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 shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

## 2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract.

## 2.076 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
  - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
  - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.
  - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
  - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following ("Stop-Clock Conditions"):
    - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
    - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different Contractor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.



## 2.080 Delivery and Acceptance of Deliverables

### **2.081 Delivery Responsibilities**

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

### **2.082 Delivery of Deliverables**

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

### **2.083 Testing**

- (a) Prior to 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 in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such 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 shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such 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 shall be entitled to observe or otherwise participate in testing.

### **2.084 Approval of Deliverables, In General**

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be



facilitated by ongoing consultation between the parties, visibility 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) Prior to 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 in accordance with **Section 2.083(a)**.
- (d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall 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 (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such 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 such breach. Notwithstanding the foregoing, the State shall not 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 such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

## **2.085 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.



## 2.086 Process for Approval of Services

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

## 2.087 Process for Approval of Physical Deliverables

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

## 2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. 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.

## 2.090 Financial

## 2.091 Pricing

### (a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO 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. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). 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.

### (b) 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, using the rates in **Article 1, Attachment** unless specifically identified in an applicable Statement of Work.

### (c) 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.

(d) Labor Rates

All time and material charges will be at the rates specified in Article 1, Attachment C.

## 2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) 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.

(ii) 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. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. 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 2.094**.

(iii) 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 forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, 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 such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) 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.

(e) 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.

(f) 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.



### **2.093 State Funding Obligation**

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

### **2.094 Holdback**

The State shall have the right to hold back, as a retainage, an amount equal to TEN percent (10%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

### **2.095 Electronic Payment Availability**

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

## **2.100 Contract Management**

### **2.101 Contract Management Responsibility**

- (a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.
- (b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

### **2.102 Problem and Contract Management Procedures**

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

### **2.103 Reports and Meetings**

Mandatory Reports and Meetings are defined in the Statement of Work

- (a) Reports.
  - Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:
    - (i) separately address Contractor's performance in each area of the Services;
    - (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
    - (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
    - (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
    - (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
    - (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.



- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

## 2.104 System Changes

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

## 2.105 Reserved

## 2.106 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 State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of



compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall 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 shall 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").

(v) No proposed Change shall 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.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## **2.107 Management Tools**

Mandatory Tools for this contract are listed in the Statement of Work. Contractor will use an automated tool for planning, monitoring and tracking the Contract's progress. In addition, Contractor shall use automated project management tools as reasonably necessary to perform the Services, which tools shall include the capability to produce through the end of the Contract: (i) staffing tables with names of personnel assigned to Contract tasks, (ii) project plans showing tasks, subtasks, Deliverables and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) days, updated semi-monthly) and (iii) graphs showing critical events, dependencies and decision points during the course of the Contract. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State's standard to the extent such information is described with reasonable detail in the Statements of Work and to the extent the related work is of sufficient project complexity and duration to warrant such reporting.

### **2.110 Records and Inspections**

## **2.111 Records and Inspections**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.



## 2.112 Errors

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall 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 (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement 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 ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

### 2.120 State Responsibilities

## 2.121 State Performance Obligations

- (a) Equipment and Other Resources. To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) Facilities. The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) Return. Contractor shall be responsible for returning 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.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

### 2.130 Security

## 2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. 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. Such 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/ditservice/0,1607,7-179-25781-73760--00.html>. 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.

2.140 Reserved

2.150 Confidentiality

**2.151 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").

**2.152 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 shall 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 shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection 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 in order 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) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such 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 such Confidential Information from unauthorized use or disclosure.

**2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section 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 such 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 this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.

### **2.155 No Implied Rights**

Nothing contained in this Section shall 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.

### **2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

### **2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall 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 ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

### **2.158 Survival**

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

### **2.159 Destruction of Confidential Information**

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

### **2.160 Proprietary Rights**

#### **2.161 License**

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

The State may copy each item of Software to multiple hard drives or networks unless otherwise agreed by the parties.

The State will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. The State may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.

In the event that the Contractor shall, for any reason, cease to conduct business, or cease to support the Software, the State shall have the right to convert these licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.



## 2.162 Source Code Escrow

(a) Definition. "Source Code Escrow Package" shall mean:

- (i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- (ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- (iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

(b) Delivery of Source Code into Escrow. Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within thirty (30) days of the execution of this Contract.

(c) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

(d) Verification. The State reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Source Code Escrow Package.

(e) Escrow Fees. All fees and expenses charged by the Escrow Agent will be paid by the Contractor.

(f) Release Events. The Source Code Escrow Package may be released from escrow to the State, temporarily or permanently, upon the occurrence of one or more of the following:

- (i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;
- (ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;
- (iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

(g) Release Event Procedures. If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in **Section 2.162(f)**, then:

- (i) The State shall comply with all procedures in the Escrow Contract;
- (ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;
- (iii) If the release is a temporary one, then the State shall promptly return all released materials to Contractor when the circumstances leading to the release are no longer in effect.

(h) License. Upon release from the Escrow Agent pursuant to an event described in **Section 2.162(f)**, the Contractor automatically grants the State a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, the State shall have the right to use the Source Code Escrow Package in order to maintain and support the Licensed Software so that it can be used by the State as set forth in this Contract.

(i) Derivative Works. Any Derivative Works to the source code released from escrow which are made by or on behalf of the State shall be the sole property of the State. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

## 2.163 Rights in Data

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. 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 Contractor, nor will any employee of 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, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

- (b) The State is and shall remain the owner of all State-specific data pursuant to 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 shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

#### **2.164 Ownership of Materials**

State and 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.

#### **2.165 Standard Software**

If applicable and necessary, all Standard Software used in performing the Services shall be provided to the State under a separate license agreement between the State and the owner (or authorized licensor) of such software. Standard Software to be licensed to the State is listed in **Exhibit C**.

#### **2.166 Pre-existing Materials for Custom Software Deliverables**

Neither Contractor nor any of its Subcontractors shall incorporate any preexisting materials (including Standard Software) into Custom Software Deliverables or use any pre-existing materials to produce Custom Software Deliverables if such pre-existing materials will be needed by the State in order to use the Custom Software Deliverables unless (i) such pre-existing materials and their owners are identified to the State in writing and (ii) such pre-existing materials are either readily commercially available products for which Contractor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by the State) in the name of the State, or are materials that Contractor or its Subcontractor, as the case may be, has the right to license to the State and has licensed to the State on terms and conditions approved by the State prior to using such pre-existing materials to perform the Services.

#### **2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

### **2.170 Warranties And Representations**

#### **2.171 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall 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 such items in this Contract, Contractor shall 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, shall have, or shall 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 shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall 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 shall 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 such 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 such financial statements, reports, other information. Since the respective dates or periods covered by such 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 behalf of 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 such 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 such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

## **2.172 Software Warranties**

- (a) Performance Warranty - The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.



- (b) No Surreptitious Code Warranty - The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code. Unauthorized Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

- (c) Calendar Warranty - The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

- (d) Third-party Software Warranty - The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

### **2.173 Equipment Warranty**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

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



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

The Contractor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Contractor shall act as the sole point of contact for warranty service. The Contractor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

#### **2.174 Physical Media Warranty**

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

#### **2.175 Standard Warranties**

##### **(a) Warranty of Merchantability**

Deliverables shall be merchantable. All Deliverables shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor on the container or label.

##### **(b) Warranty of fitness for a particular purpose**

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

##### **(c) Warranty of title**

Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by Contractor shall be delivered free from any security interest, lien, or encumbrance.

Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

#### **2.176 Consequences For Breach**

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

#### **2.180 Insurance**

##### **2.181 Liability Insurance**

##### **(a) Liability Insurance**

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below.

The purpose of this coverage shall be to 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 such 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 pursuant to this Contract.



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

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---.00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---.00.html).

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("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) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (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 and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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  
 \$500,000 Fire Damage Limit (any one fire)

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

- ☒ 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.

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

- ☒ 3. Workers' compensation coverage must be provided in accordance with 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 shall 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 shall 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 such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall 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 shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall 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) shall 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.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall 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.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or



indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

## 2.190 Indemnification

### **2.191 Indemnification**

#### (a) General Indemnification

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

#### (b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

#### (c) Employee Indemnification

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

#### (d) Patent/Copyright Infringement Indemnification

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

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

Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than



implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

## **2.192 Continuation of Indemnification Obligations**

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

## **2.193 Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

## **2.200 Limits of Liability and Excusable Failure**

### **2.201 Limits of Liability**

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (for low risk contracts – Select a higher amount for moderate to high risk contracts) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks 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.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall 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.

## **2.202 Excusable Failure**

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

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

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

## **2.203 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 manmade disaster.

### 2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

#### **2.211 Termination for Cause**

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for 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 shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event 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 shall 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 shall cease on the effective date of the termination.
- (d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

#### **2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall 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 thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

#### **2.213 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 shall have the right to 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 shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (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 made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such 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 such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall 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. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/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.

## **2.214 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 incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

## **2.215 Approvals Rescinded**

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. 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 such written notice.

## **2.216 Rights and Obligations Upon Termination**

(a) If this Contract is terminated by the State for any reason, Contractor shall (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) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will 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 shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such 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) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to 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 pursuant to this Contract shall, at the option of the State, become the State's property,



and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be 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 shall have the right to assume, at its option, any and all 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.

### **2.217 Reservation of Rights**

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

### **2.218 Contractor Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise 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. In the event of termination or the expiration of this Contract, 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 ninety (90) days. These efforts shall include, but are not limited to, the following:

(a) **Personnel** - The Contractor shall 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 shall 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 Contractors, 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 Contractors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) **Information** - 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.

(d) **Software** - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall 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 shall, 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.

(e) **Payment** - If the transition results from a termination for any reason, reimbursement shall 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 specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

### **2.219 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.

## 2.220 Termination by Contractor

### **2.221 Termination by Contractor**

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

## 2.230 Stop Work

### **2.231 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 ninety (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 shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of 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 shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

### **2.232 Cancellation or Expiration of Stop Work Order**

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall 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 thirty (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 2.106**.

### **2.233 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, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

## 2.240 Reserved

## 2.250 Dispute Resolution

### **2.251 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 shall 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 shall submit a letter executed by Contractor's Contract Administrator or his 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 supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

## **2.252 Informal Dispute Resolution**

- (a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order 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 shall 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 sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.
- (b) This **Section 2.250** 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 pursuant to **Section 2.253**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

## **2.253 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such 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.

## **2.254 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 shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

## **2.260 Federal and State Contract Requirements**

### **2.261 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 pursuant to 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.

## **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall 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 pursuant to 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, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to 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.

## **2.263 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor shall 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 shall 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>.

## **2.270 Litigation**

### **2.271 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 thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) 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 hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. 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. In the event that any such Proceeding disclosed to the State pursuant to 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 hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:



(1) Within thirty (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 shall notify the Purchasing Operations.

(2) Contractor shall also notify the Purchasing Operations within thirty (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 shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

### **2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, 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.

### **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

### **2.274 Jurisdiction**

Any dispute arising from the Contract shall 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 such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such 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.

### **2.280 Environmental Provision**

#### **2.281 Environmental Provision**

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., 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 such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of 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 shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.



(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such 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 2.076** 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 shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

## 2.290 General

### **2.291 Amendments**

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

### **2.292 Assignment**

(a) Neither party shall have the right to assign the Contract, or to 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 such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such 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. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

### **2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

### **2.294 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.



## **2.295 Relationship of the Parties (Independent Contractor Relationship)**

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 shall be or shall 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.

## **2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such 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 (3rd) 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 of Michigan  
Purchasing Operations  
Attention: Dale N. Reif  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:

State of Michigan  
Department of Information Technology  
Attention: Sara Williams  
Chandler Plaza  
300 East Michigan Street  
Lansing, MI 48913

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

## **(b) Binding Commitments**

Representatives of Contractor identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

## **2.297 Media Releases and Contract Distribution**

### **(a) Media Releases**

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

### **(b) Contract Distribution**

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

## **2.298 Reformation and Severability**

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



## **2.299 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, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

## **2.300 No Waiver of Default**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

## **2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall 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.

## **2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall 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.

## **2.303 Permits**

Contractor shall 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 shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

## **2.304 Website Incorporation**

State expressly states that it will not be 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 such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

## **2.305 Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Contractor who has failed to pay any applicable State taxes. The State may refuse to accept Contractor's bid, if Contractor has any outstanding debt with the State. Prior to any award, the State will verify whether Contractor has any outstanding debt with the State.

## **2.306 Prevailing Wage**

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

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development,



the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

### **2.307 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 shall be a material breach of this Contract.**

### **2.308 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 Contractor offering free assistance) to gain a leading edge on the competitive RFP.

*2.310 Reserved*

*2.320 Extended Purchasing*

### **2.321 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/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by 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.

### **2.322 State Employee Purchases - Reserved**

*2.330 Federal Grant Requirements*

### **2.331 Federal Grant Requirements**

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required. Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epl/servlet/EPLSearchMain/1>

**Article 1, Attachment A - Payment Schedule**

Description	Price	Recurring	6 Year Cost
1) Software Solution EMS State Bridge	\$ 184,000.00		
a) vendor hosting (annual)	\$ 20,400.00	\$ 20,400.00	\$122,400.00
b) manuals	\$ included		
c) staffing for implementation	\$ 13,000.00		
d) on going support costs for per year for six (6) years	\$ 29,440.00	\$ 29,440.00	\$176,640.00
1. online problem resolution	Included		
2. help desk support	Included		
3.. software updates	Included		
2) Testing	\$ 10,000.00		
3) Training Costs	\$ 20,000.00		
4) pilot cost	Included in Testing		
5) configuration costs (Included)	Included		
6) interface costs (NEMSIS XML Included)	Included		
7) price for incremental expansion of licenses	None		
<b>6 Year Total</b>	<b>\$ 276,840.00</b>	<b>6 Year Total</b>	<b>\$ 526,040.00</b>
Other considerations / Optional modules:	Unit price	Annual Support	
1. A mechanism for communication between State and end user. - System Messaging	Included in pricing		
2. A repository for reference tools - Knowledgebase	Included in pricing		
3. Quality Assurance Mechanisms (this is not the same as software validity rules which is required).	Included in pricing		
4. A method of dissemination of educational tools to enhance quality of care in the EMS arena.	\$ 24,000.00	\$ 3,840.00	
5. A method to track bed availability at State Trauma Centers. Resource Bridge – Bed tracking module	\$ 30,000.00	\$ 4,800.00	
State Bridge Diversion Status	\$ 15,000.00	\$ 2,400.00	
Command Center	\$ 15,000.00	\$ 2,400.00	
Alert and Notification System	\$ 15,000.00	\$ 2,400.00	
6. The incorporation of maps or GPS points for plotting events in the State. GIS API	\$ 12,000.00	\$ 1,920.00	
7. The ability to accept data from CAD and dispatch systems into a run report. CAD API	\$ 20,000.00	\$ 3,200.00	
Vendor related cost associated with SOM hosting (estimated)	\$ 30,400.00		
Cost for a transfer of hosting from the vendor to SOM	\$ 10,000.00		
Configurable Dashboard	\$ 16,000.00	\$ 2,560.00	
EMS Field Bridge statewide MIDEAL pricing as the field solution - each license	\$ 1,000.00	\$ 400.00	
Optional Offsite Secondary Hosting Site Page 9 an additional \$1000 / mo	\$ 12,000.00		
Visual Informatics (Data Mining)	\$ 60,000.00	\$ 9,600.00	
Trauma Bridge	\$120,000.00	\$ 19,200.00	
Patient Tracking	\$ 75,000.00	\$ 12,000.00	
Patient-at-Risk	\$ 75,000.00	\$ 12,000.00	
Optional X Team Support	TBD time of order		

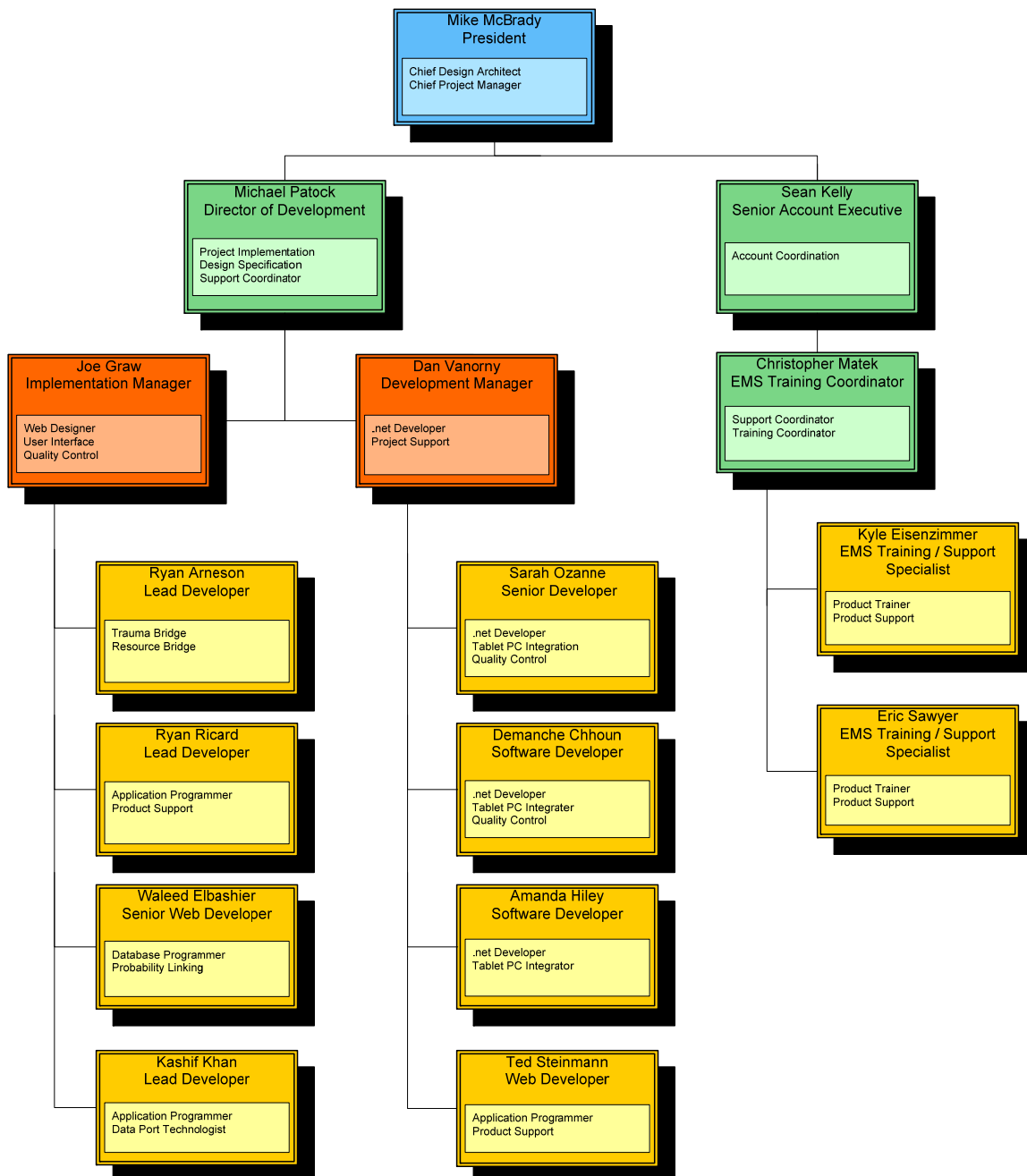


## Article 1, Attachment B - Organizational Chart, including Key Personnel

This chart identifies all the KEY staff and their role on the project and includes the Contractor's Project Manager and the line of communication to the MEMSIS Project Manager. The following KEY staff must be included:

- Contractor's project manager - Michael Patock

### Emergency Data Systems Organizational Chart



**Article 1, Attachment C - Labor Rates**

<b>Service</b>	<b>Hourly Rate</b>
Development	\$110.00
Training	\$110.00
Project Management	\$125.00

**Article 1, Attachment D - Deliverables**

Reserved

**Article 1, Attachment E - Project Plan**

Reserved



**Article 1, Attachment F - Service Level Agreement**

Reserved



## Article 1 Attachment G – Standard Report List

### **Run Times**

Age Patient Demographics  
 At Scene Time Response Time  
 Average Time at Scene by County  
 Average Time at Scene by Service  
 Average Total Run Times by County  
 Average Total Run Times by Service  
 Response Time by County  
 Response Time by Service  
 Response Time by Unit No.  
 Run Times by Service

### **Service Demographics**

Service Summary  
 Full Staff Report Staff Demographics  
 Contact Information  
 Total by City

### **Patient Demographics**

By City  
 County  
 Gender  
 Medical/Surgical History  
 Name and Birthday  
 Race

### **Medication**

Medication Given  
 Medication Given by Service  
 Medication Given by Year

### **System**

Security Log  
 System Administrators  
 Upload Summary  
 Audit Report  
 by Service  
 Validation Rules  
 System Upload Times

### **Treatment**

by Year  
 Procedures by Staff  
 Reason Transfers  
 Refusal Report  
 Type Performed

### **Custom Reports**

Ambulance Run Data Report  
 Avg. Patient Age Report  
 Avg. Patient Age by Gender Report

### **Transfer Reasons**

#### **Run (Quantity)**

Advanced Life Support Runs  
 ALS Runs by Service  
 Call Information  
 City  
 City and Service  
 County  
 CPR Time  
 Dest Determination  
 Detail Runs by County  
 Impression Desc  
 Lights, Sirens  
 Location Type  
 Mileage by County  
 Mileage by Service  
 Provider Impression  
 Requested By  
 Safety Equipment  
 Service  
 Service Level  
 Vehicle Type  
 Year and City  
 Year and County  
 Year and Service

#### **QA**

Completed Provider Impression  
 Dispatch Run Information  
 Injury Data  
 Injury Site  
 Injury Type  
 IV Success Rate  
 Lights & Sirens  
 Master Phone List  
 Utstien Report  
 Validation Rules

#### **Audit Reports**

Audit Report  
 Validity Audit Report  
 Field Audit Report  
 Run Report  
 Run Variance Report



***Avg. Response Time Report***  
***Avg. Run Mileage Report***  
***Avg. Run Times Report***  
***Call Summary by Staff Report***  
***Call Summary Report***  
***Medication Administered***  
***Runs by City Report***  
***Patient Summary Report***  
***Provider Impression Report***  
***Receiving Hospital Medical Summary Report***  
***Receiving Hospital Trauma Summary Report***  
***Response Disposition by Service Report - Trauma***  
***Response Disposition by Staff Report***  
***Runs per Month Report***  
***Response Time by Response Disposition***  
***Scene Time by Response Request Report***  
***Scene Time Summary Report***  
***Severity of Cases Report***  
***Staff Review Report***  
***Times of Call Report***  
***Times of Call Report - Non-Trauma***  
***Times of Call Report - Trauma***  
***Transport Code by Response Request Report***  
***Transported by Destination***  
***Treatments Provided***

**System Reports**

***User Performance Report***  
***Live System Report***  
***All Export Tasks***  
***All Import Tasks***  
***Completed Import Report***  
***In Progress Import Report***  
***Import Performance Report***



**Article 1, Attachment H – Implementation Plan**

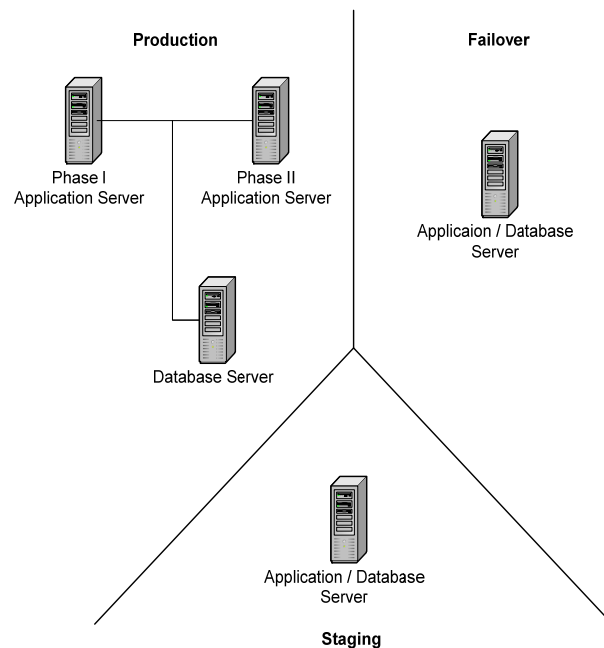
Reserved

**Exhibit A - Approved Subcontractors**

No subcontractors will be used in this Contract



## **Exhibit B - Approved Hardware And Network Diagram**



### **Hardware**

Contractor server hardware is configured to prevent data loss due to hardware failure and utilize the following to ensure a quick recovery from any hardware related problems.

- Independent Application and Database Servers
  - Microsoft SQL Server 2000
  - Microsoft Windows Advanced Server 2000
- Dual Power Supplies
- Off-Site Idle Emergency Backup Servers in Chicago, IL (optional)
- Off-Site Idle Emergency Backup Servers in Lakeville, MN
- Sonicwall VPN Firewall
- Networked Server Array
- Mirrored Hot Swappable Hard drives (Banded RAID 5)
- Tape Backups
  - Weekly, monthly or quarterly
- Periodic CD-ROM backups (on request)
  - Weekly, monthly or quarterly
  - Offsite vaulting and escrow
- 500 MB Disk Space allocation per month with additional space in 100MB increments
- 1 GB Traffic or Bandwidth per month with additional bandwidth available in 1GB increments



### **Exhibit C - Approved Software**

**NEMSIS Gold:** Contractor is NEMSIS gold compliant and based upon the most current version of the NHTSA data set, which is Version 2.2.1. Contractor is committed to supporting the national data set, since Contractor understands the importance of a national data set and its positive impact on convenient data exchange and the potential role that EMS data plays in improving health care. NEMSIS Gold compliance certification was received in July 2006. Currently the states of Minnesota and New Hampshire, both using the EMS State Bridge, are submitting their data to NEMSIS.

The release of the national NHTSA v2.2.1 data set certainly has done much for the standardization of pre-hospital data and improving communications. Although embraced by a consortium of States, they have also determined a need for some additional data elements. So the NISE (pronounced “nice”) codes have evolved. NHTSA Implemented State Enhanced codes have been defined by Contractor in conjunction with the State user community. NISE brings further standardization and practicality to the NHTSA dataset.

An example would be a further clarification of the NHTSA V2.2 ‘Skin Assessment’ with ‘Rash’ from the NISE code set. Another good example would be the NHTSA code for drowning, which NISE delineates into salt or fresh water. These NISE codes are then available in EMS Bridge products from the quick pick lists.

In the continuing effort to streamline and improve communications, the NISE code will also be supporting selected NFIRS, Trauma and billing codes.

**EMS State Bridge:** The EMS State Bridge consists of the data repository based upon the NHTSA V2.2.1 uniform data set (NFIRS also available), and functional modules. The system provides:

- Data collection based upon the NHTSA V2.2.1 data set.
- Security Module for system and data access control
- DataPort for data exchange
- Standard Report Writer for querying and reporting
- Quality Assurance
- Knowledgebase for reference documents
- Visual Informatics advanced reporting with data cubing techniques (optional)
- EMT/Paramedic Certification Tracking
- Trauma Bridge (optional)
- Resource Bridge (optional)
- HIPAA compliant and sensitive to medical data security issues. The application meets and exceeds state and federal data privacy requirements.
- Scalable to conform to the needs of small, medium and large services as required.

**Product Description:** Contractor shall provide a certified NEMSIS Gold compliant and provides both imports and exports in gold and silver XML formats as defined by NEMSIS. “Contractor”

The EMS State Bridge and the optional EMS Field Bridge contain an overall architectural design that is an open scalable database structure supporting full functionality with ease of expansion as requirements grow and change.

**Exhibit D - Binding Commitments**

Reserved