

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 5 (Revised)
 to
 CONTRACT NO. 071B8200223
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101	Michael Yee	michael.yee@securian.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	855-239-7380	*****7830

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MCSC	Lauri Schmidt	517-373-9211	schmidtl@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Dan Stevens	517-284-7017	StevensD6@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: Life Insurance Administration Services – Department of Civil Service				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
July 16, 2008	September 30, 2013	2 - 1 Year	September 30, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
N/A		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	270 Days	June 30, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$248,141,000.00		\$ 41,000,000.00	\$289,141,000.00	

DESCRIPTION:

Effective October 1, 2016, this Contract is hereby extended 270 days per Section 2.218, and is increased by \$41,000,000.00. The revised Contract expiration date is June 30, 2017. Article 1, Attachment A, Pricing is hereby updated to reflect rates effective October 1, 2016 and October 9, 2016 per the attached document. Section 1.104 Work and Deliverables has been replaced, per the attached Section 1.104 document. Please note the Contract Administrator has changed to Dan Stevens per section 2.014. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on June 7, 2016.

Article 1, Attachment A
Pricing

Biweekly Premium Rates:

Employee and Retiree:

Billed: \$0.213 per \$1,000

Contract: \$0.269 per \$1,000 (effective 10/1/2008 – 9/30/2016)

\$0.286 per \$1,000 (effective 10/1/2016 – 6/27/2017)

Dependent:

Plan F: \$ 0.20

Plan G: \$ 0.60

Plan H: \$ 1.20

Plan K: \$ 4.00

Plan L: \$ 0.75

Plan M: \$7.62 (effective 10/9/2016)

Plan N: \$1.13 (effective 10/9/2016)

Administrative Fee Per Claim:

- \$349 per claim (for policy years from 10/1/2008 – 9/30/2015)
- \$524 per claim (10/1/2015–9/30/2016)
- \$611 per claim (10/1/2016-6/27/2017)

Other Charges: 1.50% of premium to cover state premium tax

Conversion Charges:

- \$60 per \$1,000 of converted coverage

Rate Guarantee Period: Five years with two optional one-year extensions

Interest Rates & Reserve Calculation Method:

Minnesota Life will credit interest on the same basis as used currently, at a rate equal to the average investment yield rate of 13-week treasury bills auctioned during the policy year.

Minnesota Life will establish a pending death claim reserve equal to the face amount of insurance when notified of a claim.

Minnesota Life will use a basis similar to Part 1 of the IBNR reserve calculation under your current financial basis and will charge the plan for all claims that are known within 60 days after the plan year ends but not paid during the plan year. This includes both those claims that are paid during the 60-day period and those that are pending at the end of the 60-day period.

Minnesota Life will not charge the plan for an “unknown” claims reserve as in Part 2 of the current IBNR reserve calculation. Instead, any claims reported after the 60-day runout period will be included in the following policy year’s calculation.

Assumptions & Qualifications:

The rates and fees included in this Contract assume that Minnesota Life will mail one certificate booklet to each active member and retiree when the plan is implemented. Minnesota Life will also mail one certificate booklet to each new active member during the contract period and will mail one new certificate booklet to each retiree upon retirement.

.104 Work and Deliverable

The Contractor must duplicate the current program as follows:

(A) Plan Design

(1) **Benefit formula for employee coverage.** State employees are covered for two times annual salary calculated by multiplying the hourly rate times 2088 hours, then multiplying by two and rounding to the next highest \$1,000. The maximum benefit is \$200,000.

The premium for this coverage is 100% paid by the state. Imputed income beyond \$50,000 is calculated by the Payroll System and included on the W-2 without any assistance required from the insurance carrier. Employees may choose to default to the benefit described above **or** to choose a benefit of the lesser of one times salary or \$50,000 and receive the premium difference as compensation to avoid any tax liability under Section 79.

(2) **Benefit formula for dependent coverage.** The State of Michigan provides five levels of optional dependent coverage for state employees. The employee pays 100% of the cost for dependents. Children can be covered from the 15th day following birth until age 23. In addition, children who are physically or mentally impaired or incapacitated can be covered beyond the age of 23 if the premium is paid. The five options are:

- Plan F - \$1,500/spouse and \$1,000 on each child.
- Plan G - \$5,000/spouse and \$2,500 on each child.
- Plan H - \$10,000/spouse and \$5,000 on each child.
- Plan K - \$25,000/spouse and \$10,000 on each child.
- Plan L - \$0/spouse and \$10,000 on each child.
- Plan M - \$50,000/spouse and \$15,000 on each child (effective 10/9/2016).
- Plan N - \$0/spouse and \$15,000 on each child (effective 10/9/2016).

(3) **Accidental Duty Death.** The State provides a \$100,000 (\$150,000 for members of two bargaining units) accidental death benefit for employees killed on the job from accidental injury. This amount is paid in addition to the benefit described above. This does not include duty-incurred diseases; only death as a result of an accidental injury to the body.

The only exclusions under the accidental duty death benefit are deaths resulting as follows:

- from an injury that occurred when the employee was not insured under the policy
- more than 180 days after the date of the accident
- from suicide or attempted suicide whether the employee was sane or insane
- by war or an act of war
- from an accident while the employee is traveling between work station and home, either as a pedestrian or in a private automobile, common carrier, carpool or vanpool (whether private or State sponsored), unless the employee is in official travel status
- from any illness, including heart attacks and strokes, except (a) illnesses which directly resulted from a covered occupational accident and (b) the loss of life occurs within 180 days of the accident.

(4) **Retiree Benefits.** A retired state employee who qualifies for an immediate pension benefit automatically receives a retiree life insurance benefit equal to one-fourth of the benefit on the day before retirement. With a maximum \$200,000 covered limit as an active employee, the retired employee is limited to a maximum \$50,000 of coverage.

If a retiree had elected as an active employee dependent coverage under Option F, G, H, K, or L, the coverage for spouse or dependent children will be reduced to \$1,000 each, fully paid by the State with no premium payable by the retiree. If the surviving dependents do not continue to receive a pension benefit beyond the death of the retiree, the \$1,000 coverage stops. If a pension benefit continues for the survivors upon the death of the retiree, the coverage continues.

(5) **Conversion Privileges.** Group life insurance coverage may be converted to an individual life insurance policy without evidence of insurability upon the following circumstances:

- **Employees.** Separation from State service or reclassification that results in a lower benefit. Conversion is also available if the employee had been insured under the policy for at least three years and the group

policy is discontinued or the class of employees to which the employee belongs is no longer eligible for group life insurance under the policy.

- **Covered Spouses.** Death of the employee or the employee's separation from State service.

(B) Eligibility Data

The eligibility file is maintained by the State through its Payroll System. Therefore, the Contractor is not required to maintain an eligibility database. Since the State pays 100% of the premium, employees are automatically covered from the first day of employment. Employees have 31 calendar days from the date of employment to select optional dependent coverage from the five levels available and name a beneficiary. The State also will maintain records of beneficiary designations, either through paper forms or electronically.

When an employee or covered dependent dies, beneficiaries contact the HR Office of the employing agency or the Office of Retirement Services to initiate death claims. The State confirms enrollment and beneficiary designations and sends the death claim form and supporting documentation to the Contractor. The Contractor shall accept all beneficiary designations based on the documents provided by the State.

(C) Administrative Services

Administrative services must include, but need not be limited to, the following:

- (1) Provide plan booklets no more often than once a year for each year under contract.
- (2) Provide proof of loss claim forms and instructions for completing them.
- (3) Initiate the processing of the death claim within five calendar days of receipt of proof of death as follows:
 - Write and mail claim checks to beneficiaries within five calendar days working days of receipt of the claim.
 - For retired employees, the Office of Retirement Systems, Department of Management and Budget will be the contact for death claim administration rather than the employing agency.
- (4) The Contractor shall handle all initial beneficiary disputes brought by spouses, ex-spouses, children, and other persons named or unnamed as beneficiaries of the death benefit. In the final response by the Contractor to a complainant, the Contractor shall provide the complainant with notice of his appeal rights to the Employee Benefits Division, as provided in applicable civil service rules and regulations. The Contractor shall promptly provide copies of all its records related to a dispute to the Employee Benefits Division, upon request.
- (5) The Contractor shall resolve disputes regarding the claim of a duty or non-duty death. This benefit determination process should include input from the Employee Benefits Division on the merit to support payment.
- (6) The Contractor will assign an account representative, and a service representative to respond to inquiries, requests, and issues raised by the State.

- (7) The Contractor will provide other services as follows:

Beneficiary Financial Counseling:

Beneficiary financial counseling services provided by PricewaterhouseCoopers LLP (PwC), offer objective financial counseling when it is needed most. The service is available, at no cost, to beneficiaries who receive a benefit of \$25,000 or more. PwC counselors are experienced Certified Financial Planners, Certified Public Accountants, attorneys, and personal financial specialists. PwC counselors do not and can not sell products; their objective is to help families understand and address financial decisions at a difficult time. They provide objective counseling on topics such as estate settlement, budgeting and taxes.

Technology Solutions for Benefits Staff:

Through LifeBenefits, Minnesota Life's website customized to the State of Michigan's plan, benefits staff will be able to access:

- Claims status, information updated daily
- ReportBuilder, a dynamic tool that allows users to create claims reports specific to their needs
- Weekly claims activity reports
- Secure e-mail and attachments
- Contact information for the account team
- eClaims, Minnesota Life's online claim submission tool

(D) Financial

- (1) **Premiums.** Premiums are paid by the State for employees, retirees, and dependents of retirees as described in Section (a). Employees pay optional dependent coverage premiums through biweekly payroll deductions, which are remitted to the carrier.

These premiums are intended to cover all active and retiree claims, the accidental death benefit, conversion charges, and retention. Retention includes administrative fees, premium taxes, and interest on cash flow.

The premium is paid to the carrier by the end of each pay period to fund claim payments. If a positive cash flow emerges, the State is paid interest on the cash flow. The cash flow interest is calculated by taking the total amount of premium surplus divided by two and then multiplied times the prevailing short-term interest rate. Conversely if a deficit is generated from collected premiums being less than paid claims, then the State would be charged a negative cash flow in the same manner. The Contractor holds the incurred but unpaid claim reserve.

The Contractor will credit interest on the same basis as used currently, at a rate equal to the average investment yield rate of 13-week treasury bills auctioned during the policy year.

The Contractor will establish a pending death claim reserve equal to the face amount of insurance when notified of a claim. Minnesota Life will use a basis similar to Part 1 of the IBNR reserve calculation under the previous contract's financial basis and will charge the plan for all claims that are known within 60 days after the plan year ends but not paid during the plan year. This includes both those claims that are paid during the 60-day period and those that are pending at the end of the 60-day period.

The Contractor will not charge the plan for an "unknown" claims reserve as in Part 2 of the previous contract's IBNR reserve calculation. Instead, any claims reported after the 60-day runout period will be included in the following policy year's calculation.

If the billed premium exceeds claims and retention amounts, the excess is returned to the State at the end of each plan year.

If billed premium for active and retiree coverage and dependent premium are not sufficient to pay for claims, retention, and any deficit brought forward from the preceding policy year, then the State will pay an additional premium to the carrier. The additional premium will be calculated so that total premium equals the sum of claims, the accidental death benefit, conversion charges, retention and any deficit from the preceding policy year. The billed premium paid for employee and retiree insurance plus the additional premium shall not exceed the premium that would have been paid at the contract rates. If the additional premium is not sufficient to pay for the claims, retention and any deficit brought forward from the preceding policy year, the difference will be carried forward as a charge against the subsequent years' experience.

- (2) **Waiver of Premium.** The State self-insures employees who are subject to Disability Waiver of Premium. The eligibility requirement for authorization of Waiver of Premium is that the employee be totally disabled and in receipt of Long Term Disability, Social Security Disability, Workers' Compensation, or Duty or Non-Duty Disability Retirement Benefits. The Waiver of Premium allows continuation until age 65 of the same life insurance benefit as was provided as of the last day worked. After age 65, the benefit will reduce to 25% of the pre-65 coverage amount. Waiver of Premium claims are funded as they occur from the billed premium.

All actively-at-work clauses will be waived. Specifically, any individual covered under the State plan with the current carrier will be covered by the new carrier even if that individual is not at work when the new policy is effective. Individuals to be covered by the carrier will include:

- all disabled employees currently covered
- retirees currently covered
- any employees who are absent from work for any reason on the policy effective date
- any covered dependents of employees who are absent from work for any reason on the policy effective date.

- (3) **Conversion Charge.** The State currently pays a conversion charge for employees who convert to an individual policy from the group plan.
- (4) **Direct Pay.** The State allows employees who are laid off or on leaves of absence to continue to pay their life insurance premium for a 12- to 36-month period after the last day at work. The State collects these premiums with other group insurance premiums and remits them to the reserves in the State Treasurer Common Cash Fund. This is done for ease of accounting and assures the Contractor will not be burdened with this collection process. Such employees must be covered under any new policy.
- (E) Subcontracting.** Provisions on use of subcontractors are given in Article 2. The State expects that all essential services associated with this program will be provided directly by the Contractor, and that use of subcontractors will be minimal.

STATE OF MICHIGAN
Renewal Proposal
Rates and Fees effective 10/1/2016

Renewal Alternatives

Alternative	Administration Fee		Change in Administration Fee		Basic Contract Rate		Change in Basic Contract Rate	
	Per Claim	Annual Fee*	Annual Amount	Percent	Biweekly Rate	Max Premium**	Annual Amount	Percent
Current	\$ 524	\$ 1,017,433			\$ 0.269	\$ 38,668,081		
A	611	1,186,358	\$ 168,925	17%	0.286	41,111,788	\$ 2,443,708	6.3%

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

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B8200223
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101	Michael Yee	Michael.yee@securian.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(855) 239-7380	-7830

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MCSC	Lauri Schmidt	(517) 373-9211	schmidt1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lance Kingsbury	(517) 248-7017	kingsbury1@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Life Insurance Administration Services – Department of Civil Service			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 16, 2008	September 30, 2013	2, one year	September 30, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1 year	September 30, 2016
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$248,141,000.00	\$0.00	\$248,141,000.00		

DESCRIPTION:

Effective immediately, this contract is hereby extended to September 30, 2016 and the Administrative Fee per claim as referenced in Attachment A is hereby changed to \$524.00 per claim. All other terms, conditions, pricing and specifications remain the same. Per agency request, Contractor agreement, DTMB Procurement approval and per Resolution 2015-1.

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. 3
 to
CONTRACT NO. 071B8200223
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101	Michael Yee	Michael.yee@securian.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(855) 239-7380	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MCSC	Lauri Schmidt	517-373-9211	schmidtl@michigan.gov
BUYER	DTMB	Lance Kingsbury	517-241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Life Insurance Administration Services – Department of Civil Service			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 16, 2008	September 30, 2013	2, 1 Year Options	September 30, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

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	September 30, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$39,500,000.00		\$248,141,000.00		
Effective immediately, this Contract is hereby INCREASED by \$39,500,000.00 and is utilizing an option year. The new end date is September 30, 2015. All other terms, conditions, specifications, and pricing remain the same. Per agency request, Contractor agreement, DTMB Procurement approval, and State Administrative Board approval dated September 11, 2014.				

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

September 16, 2013

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B8200223
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101	Michael Yee	Michael.yee@securian.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(855) 239-7380	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MCSC	Lauri Schmidt	517-373-9211	schmidtl@michigan.gov
BUYER	DTMB	Lance Kingsbury	517-241-3768	kingsburyl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Life Insurance Administration Services – Department of Civil Service			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 16, 2008	September 30, 2013	2, 1 Year Options	September 30, 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 checked="" type="checkbox"/> Yes <input 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	September 30, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$38,000,000.00		\$208,641,000.00		

Effective immediately, this Contract is hereby INCREASED by \$38,000,000.00 and is utilizing an option year. The new end date is September 30, 2014.

All other terms, conditions, specifications, and pricing remain the same.

Per agency request, Contractor agreement, DTMB Procurement approval, and State Administrative Board approval dated September 13, 2013.

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

March 21, 2011

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200223
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (657) 492-4387
Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101		Mark Walker
Mark.walker@minnesotalife.com		BUYER/CA (517) 241-3768
Contract Compliance Inspector: Lauri Schmidt (517) 373-9211		Lance Kingsbury
Life Insurance Administration Services – Department of Civil Service		
CONTRACT PERIOD: From: July 16, 2008		To: September 30, 2013
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

THIS CONTRACT IS EXTENDED TO ALL MiDEAL MEMBERS

NATURE OF CHANGE(S):

Effective immediately, the following terms and conditions are hereby added to the Contract:

The Contract Compliance Inspector contact in Section 2.014 is changed to:
Lauri Schmidt
Phone: (517) 373-9211
Email: SchmidtL@michigan.gov

The contact information for the buyer, Contract Administrator in Section 2.015, and State contact for Notices in Section 2.296 is changed to:
Lance Kingsbury
Purchasing Operations
Department of Technology, Management and Budget
State of Michigan
PO Box 30026
Lansing, MI 48909
Phone: 517-241-3768
Email: kingsburyl@michigan.gov

Contract Section Heading 2.320 Extended Purchasing is added back into the Contract.

The following new sections are hereby added to the Contract:

Section 2.321 MiDEAL

- A. 1984 PA 431 permits DTMB to provide purchasing services to any city, village, county, township, school district, Intermediate school district, non-profit hospital, institution of higher education, community or junior college. A current listing of approved program members is available at www.michigan.gov/mideal. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized MiDEAL member before extending the State Contract to them.**
- B. The Contractor must make the Contract available to any MiDEAL member that request to participate in the Contract. The Contractor must honor terms of the Contract when providing pricing to any MiDEAL member. The Contractor must negotiate in good faith with any MiDEAL member to offer the Services for a reasonable administrative fee. The administrative fee should be transparent, with no hidden costs or fees. The Contractor and the local unit of government may negotiate only the scale of the administrative portion of the State Contract in their administrative fee negotiations. Changes to the Article 2 Terms and Conditions, or Plan Design are not allowed.**
- C. The MiDEAL member will be in a separate experience pool, not the State of Michigan experience pool.**
- D. The Contractor must submit its invoices to, and be paid by the local unit of government on a direct and individual basis.**

Section 2.322 Civil Service Rule

- A. The Contractor must support the State in compliance with Civil Service Rule 5-11.1, Section (e)(2), in that the State Personnel Director may approve agreements with other public entities to permit their employees to participate in group insurance plans authorized by the Civil Service Commission if 100 percent of any additional total cost of participation is paid by the participating public entities or their employees.**

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

AUTHORITY/REASON: Vendor agreement dated 7-29-10, and Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$170,641,000.00

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

July 18, 2008

**NOTICE
 TO
 CONTRACT NO. 071B8200223
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101 mark.walker@minnesotalife.com	TELEPHONE (657) 492-4387 Mark Walker
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-1080 Melissa Castro
Contract Compliance Inspector: Susan Kant (517) 373-1846 Life Insurance Administration Services – Department of Civil Service	
CONTRACT PERIOD: From: July 16, 2008 To: September 30, 2013	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

Current Authorized Spend Limit: \$170,641,000.00

**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. 071B8200223
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Minnesota Life Insurance Company 400 Robert Street North St. Paul, MN 55101 <p style="text-align: right;">mark.walker@minnesotalife.com</p>	TELEPHONE (657) 492-4387 Mark Walker CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1080 Melissa Castro
Contract Compliance Inspector: Susan Kant (517) 373-1846 Life Insurance Administration Services – Department of Civil Service	
CONTRACT PERIOD: From: July 16, 2008 To: September 30, 2013	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>Current Authorized Spend Limit: \$170,641,000.00</p>	

<p>FOR THE CONTRACTOR:</p> <p style="text-align: center;">Minnesota Life Insurance Company _____ Firm Name</p> <p style="text-align: center;">_____ Authorized Agent Signature</p> <p style="text-align: center;">_____ Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____ Date</p>	<p>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Elise A. Lancaster, Director _____ Name/Title Purchasing Operations _____ Division</p> <p style="text-align: center;">_____ Date</p>
---	--



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B8200223
Employee Group Life Insurance Administration Services

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



Table of Contents

Article 1 – Statement of Work (SOW) 6

1.0 Project Identification 6

 1.001 Project Request..... 6

 1.002 Background 6

1.1 Scope of Work and Deliverables 6

 1.101 In Scope 6

 1.102 Out of Scope 6

 1.103 Environment – Deleted/Not Applicable 6

 1.104 Work and Deliverable..... 6

1.2 Roles and Responsibilities..... 11

 1.201 Contractor Staff, Roles, and Responsibilities 11

 1.202 State Staff, Roles, and Responsibilities 11

 1.203 Other Roles and Responsibilities – Deleted/Not Applicable 11

1.3 Project Plan..... 11

 1.301 Project Plan Management..... 11

 1.302 Reports..... 11

1.4 Project Management..... 12

 1.401 Issue Management..... 12

 1.402 Risk Management – Deleted/Not Applicable 12

 1.403 Change Management..... 12

1.5 Acceptance – Deleted/Not Applicable 12

1.6 Compensation and Payment 12

 1.601 Compensation and Payment..... 12

1.7 Additional Terms and Conditions Specific to this SOW- Deleted/Not Applicable..... 12

 Article 1, Attachment A..... 13

 Article 1, Attachment B..... 14

 Article 1, Attachment C, D & E – Deleted/Not Applicable 15

 Article 1, Attachment F 16

 Article 2 – General Terms and Conditions 16

2.010 Contract Structure and Administration 16

 2.011 Definitions 16

 2.012 Attachments and Exhibits 16

 2.013 Statements of Work..... 16

 2.014 Issuing Office 17

 2.015 Contract Compliance Inspector..... 17

2.020 Contract Objectives/Scope/Background 17

 2.021 Background – Deleted/Not Applicable 17

 2.022 Purpose – Deleted/Not Applicable 17

 2.023 Objectives and Scope – Deleted/Not Applicable 17

 2.024 Interpretation – Deleted/Not Applicable 17

 2.025 Form, Function and Utility 18

2.030 Legal Effect and Term 18

 2.031 Legal Effect 18

 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 – Deleted/Not Applicable 21

 2.053 Adherence to Portal Technology Tools – Deleted/Not Applicable 21

 2.054 Acceptable Use Policy – Deleted/Not Applicable 21



2.060 Deliverables 21

 2.061 Ordering 21

 2.062 Software – Deleted/Not Applicable 21

 2.063 Hardware – Deleted/Not Applicable 21

 2.064 Equipment to be New and Prohibited Products – Deleted/Not Applicable 21

2.070 Performance 21

 2.071 Performance, In General 21

 2.072 Time of Performance 21

 2.073 Liquidated Damages – Deleted/Not Applicable 22

 2.074 Bankruptcy 22

 2.075 Time is of the Essence – Deleted/Not Applicable 22

2.080 Delivery and Acceptance of Deliverables- Deleted/Not Applicable 23

2.090 Financial 23

 2.091 Pricing 23

 2.092 Invoicing and Payment Procedures and Terms 23

 2.093 State Funding Obligation 24

 2.094 Holdback – Deleted/Not Applicable 24

 2.095 Electronic Payment Availability 24

2.100 Contract Management 24

 2.101 Contract Management Responsibility 24

 2.102 Problem and Contract Management Procedures 25

 2.104 System Changes – Deleted/Not Applicable 25

 2.105 Deleted 25

 2.106 Change Requests 25

2.110 Records and Inspections 26

 2.111 Records and Inspections 26

 2.112 Errors 27

2.120 State Responsibilities- Reserved 27

2.130 Security 27

 2.131 Background Checks 27

2.140 Reserved 27

2.150 Confidentiality 27

 2.151 Freedom of Information 27

 2.152 Confidentiality 27

 2.153 Protection of Confidential Information 28

 2.154 Exclusions 28

 2.155 No Implied Rights 28

 2.156 Remedies 28

 2.157 Security Breach Notification 28

 2.158 Survival 28

 2.159 Destruction of Confidential Information 29

2.160 Proprietary Rights 29

 2.163 Rights in Data 29

 2.164 Ownership of Materials – Deleted/Not Applicable 29

 2.165 Standard Software – Deleted/Not Applicable 29

 2.166 Pre-existing Materials for Custom Software Deliverables – Deleted/Not Applicable 29

 2.167 General Skills – Deleted/Not Applicable 29

2.170 Warranties And Representations 29

 2.171 Warranties and Representations 29

 2.175 Standard Warranties – Deleted/Not Applicable 30

 2.176 Consequences for Breach 31

2.180 Insurance 31

 2.181 Liability Insurance 31

2.190 Indemnification 33

 2.191 Indemnification 33

 2.192 Continuation of Indemnification Obligations 33

 2.193 Indemnification Procedures 34



2.200 Limits of Liability and Excusable Failure 34

 2.201 Limits of Liability - Deleted/Not Applicable..... 34

 2.202 Excusable Failure..... 34

 2.203 Disaster Recovery..... 35

2.210 Termination/Cancellation by the State 35

 2.211 Termination for Cause..... 35

 2.212 Termination for Convenience 36

 2.213 Non-Appropriation 36

 2.214 Criminal Conviction 36

 2.216 Rights and Obligations Upon Termination 37

 2.217 Reservation of Rights..... 37

 2.218 Contractor Transition Responsibilities 37

 2.219 State Transition Responsibilities 38

2.220 Termination by Contractor 38

 2.221 Termination by Contractor 38

2.230 Stop Work – Deleted/Not Applicable 38

2.240 Deleted 38

2.250 Dispute Resolution 38

 2.251 In General 38

 2.252 Informal Dispute Resolution..... 39

 2.253 Injunctive Relief..... 39

 2.254 Continued Performance 39

2.260 Federal and State Contract Requirements..... 39

 2.261 Nondiscrimination..... 39

 2.262 Unfair Labor Practices..... 40

 2.263 Workplace Safety and Discriminatory Harassment 40

2.270 Litigation 40

 2.271 Disclosure of Litigation 40

 2.272 Governing Law 41

 2.273 Compliance with Laws 41

 2.274 Jurisdiction 41

2.280 Environmental Provision – Deleted/Not Applicable 41

2.290 General..... 41

 2.291 Amendments 41

 2.292 Assignment 41

 2.293 Entire Contract; Order of Precedence..... 41

 2.294 Headings 42

 2.295 Relationship of the Parties (Independent Contractor Relationship)..... 42

 2.296 Notices 42

 2.297 Media Releases and Contract Distribution..... 42

 2.298 Reformation and Severability 43

 2.299 Consents and Approvals 43

 2.300 No Waiver of Default 43

 2.301 Survival 43

 2.302 Covenant of Good Faith 43

 2.303 Permits 43

 2.304 Website Incorporation 43

 2.305 Taxes..... 43

 2.306 Prevailing Wage – Deleted/Not Applicable 43

 2.307 Call Center Disclosure 44

 2.308 Future Bidding Preclusion – Deleted/Not Applicable 44

2.310 Deleted/Not Applicable 44

2.320 Extended Purchasing- Deleted/Not Applicable 44

2.330 Federal Grant Requirements- Deleted/Not Applicable..... 44



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 Project Request

This Contract is for the administration of a self-funded group life insurance for eligible state employees, retirees, and dependents, including accidental duty death benefits for eligible employees. The Contractor will administer its group life insurance plan to ensure that retention and administrative costs are the lowest possible without compromising the integrity of the plan.

The Contract is effective July 16, 2008 through September 30, 2013. The period of July 16, 2008 through September 30, 2008 will be for implementation and transition for the Contractor. The Contractor must begin processing all claims on October 1, 2008.

1.002 Background

The State of Michigan provides group life insurance for eligible state employees, retirees, and dependents. The plan, in effect since 1961, is administered by the Employee Benefits Division (EBD) and covers all eligible executive-branch employees, as well as legislative and judicial branch employees. The plan also provides reduced coverage for retirees, accidental duty death benefits for active employees, and optional employee paid dependent life coverage.

The State Life Insurance Plan is provided in accordance with the IRC Section 79. The death benefit is tax free to the beneficiary. Employees incur imputed income on coverage over \$50,000.

The Contractor will collect biweekly premiums from the State based on the number of insureds and the coverage level. Paid claims, claim processing charges, conversion charges, and any other agreed upon expenses are subtracted from reserves established through the biweekly premium payments. The Contractor will perform an annual accounting within 90 days after the policy year ends that reconciles the premiums accrued, claim charges, Contractor's expenses, and other accounting requirements. The accounting shall include the payment to or by the State of interest charges based on any surplus or deficit in the reserve fund over the year. Any positive balance in the reserve funds at the end of the plan year is refunded to the State; the State shall alternatively pay the Contractor the amount of any shortfall in year-end balances.

1.1 Scope of Work and Deliverables

1.101 In Scope

The Contractor will administer the self-funded group life insurance for eligible state employees, retirees, and dependents, including accidental duty death benefits for eligible employees.

1.102 Out of Scope

Activities regarding enrollment processing and participant eligibility are out of scope.

1.103 Environment – Deleted/Not Applicable

1.104 Work and Deliverable

The Contractor must duplicate the current program as follows:

(A) Plan Design

- (1) **Benefit formula for employee coverage.** State employees are covered for two times annual salary calculated by multiplying the hourly rate times 2088 hours, then multiplying by two and rounding to the next highest \$1,000. The maximum benefit is \$200,000.



The premium for this coverage is 100% paid by the state. Imputed income beyond \$50,000 is calculated by the Payroll System and included on the W-2 without any assistance required from the insurance carrier. Employees may choose to default to the benefit described above **or** to choose a benefit of the lesser of one times salary or \$50,000 and receive the premium difference as compensation to avoid any tax liability under Section 79.

- (2) **Benefit formula for dependent coverage.** The State of Michigan provides five levels of optional dependent coverage for state employees. The employee pays 100% of the cost for dependents. Children can be covered from the 15th day following birth until age 23. In addition, children who are physically or mentally impaired or incapacitated can be covered beyond the age of 23 if the premium is paid. The five options are:
- Plan F - \$1,500/spouse and \$1,000 on each child.
 - Plan G - \$5,000/spouse and \$2,500 on each child.
 - Plan H - \$10,000/spouse and \$5,000 on each child.
 - Plan K - \$25,000/spouse and \$10,000 on each child.
 - Plan L - \$0/spouse and \$10,000 on each child.

- (3) **Accidental Duty Death.** The State provides a \$100,000 (\$150,000 for members of two bargaining units) accidental death benefit for employees killed on the job from accidental injury. This amount is paid in addition to the benefit described above. This does not include duty-incurred diseases; only death as a result of an accidental injury to the body.

The only exclusions under the accidental duty death benefit are deaths resulting as follows:

- from an injury that occurred when the employee was not insured under the policy
 - more than 180 days after the date of the accident
 - from suicide or attempted suicide whether the employee was sane or insane
 - by war or an act of war
 - from an accident while the employee is traveling between work station and home, either as a pedestrian or in a private automobile, common carrier, carpool or vanpool (whether private or State sponsored), unless the employee is in official travel status
 - from any illness, including heart attacks and strokes, except (a) illnesses which directly resulted from a covered occupational accident and (b) the loss of life occurs within 180 days of the accident.
- (4) **Retiree Benefits.** A retired state employee who qualifies for an immediate pension benefit automatically receives a retiree life insurance benefit equal to one-fourth of the benefit on the day before retirement. With a maximum \$200,000 covered limit as an active employee, the retired employee is limited to a maximum \$50,000 of coverage.

If a retiree had elected as an active employee dependent coverage under Option F, G, H, K, or L, the coverage for spouse or dependent children will be reduced to \$1,000 each, fully paid by the State with no premium payable by the retiree. If the surviving dependents do not continue to receive a pension benefit beyond the death of the retiree, the \$1,000 coverage stops. If a pension benefit continues for the survivors upon the death of the retiree, the coverage continues.

- (5) **Conversion Privileges.** Group life insurance coverage may be converted to an individual life insurance policy without evidence of insurability upon the following circumstances:
- **Employees.** Separation from State service or reclassification that results in a lower benefit. Conversion is also available if the employee had been insured under the policy for at least three years and the group policy is discontinued or the class of employees to which the employee belongs is no longer eligible for group life insurance under the policy.
 - **Covered Spouses.** Death of the employee or the employee's separation from State service.

**(B) Eligibility Data**

The eligibility file is maintained by the State through its Payroll System. Therefore, the Contractor is not required to maintain an eligibility database. Since the State pays 100% of the premium, employees are automatically covered from the first day of employment. Employees have 31 calendar days from the date of employment to select optional dependent coverage from the five levels available and name a beneficiary. The State also will maintain records of beneficiary designations, either through paper forms or electronically.

When an employee or covered dependent dies, beneficiaries contact the HR Office of the employing agency or the Office of Retirement Services to initiate death claims. The State confirms enrollment and beneficiary designations and sends the death claim form and supporting documentation to the Contractor. The Contractor shall accept all beneficiary designations based on the documents provided by the State.

(C) Administrative Services

Administrative services must include, but need not be limited to, the following:

- (1) Provide plan booklets no more often than once a year for each year under contract.
- (2) Provide proof of loss claim forms and instructions for completing them.
- (3) Initiate the processing of the death claim within five calendar days of receipt of proof of death as follows:
 - Write and mail claim checks to beneficiaries within five calendar days working days of receipt of the claim.
 - For retired employees, the Office of Retirement Systems, Department of Management and Budget will be the contact for death claim administration rather than the employing agency.
- (4) The Contractor shall handle all initial beneficiary disputes brought by spouses, ex-spouses, children, and other persons named or unnamed as beneficiaries of the death benefit. In the final response by the Contractor to a complainant, the Contractor shall provide the complainant with notice of his appeal rights to the Employee Benefits Division, as provided in applicable civil service rules and regulations. The Contractor shall promptly provide copies of all its records related to a dispute to the Employee Benefits Division, upon request.
- (5) The Contractor shall resolve disputes regarding the claim of a duty or non-duty death. This benefit determination process should include input from the Employee Benefits Division on the merit to support payment.
- (6) The Contractor will assign an account representative, and a service representative to respond to inquiries, requests, and issues raised by the State.
- (7) The Contractor will provide other services as follows:

Beneficiary Financial Counseling:

Beneficiary financial counseling services provided by PricewaterhouseCoopers LLP (PwC), offer objective financial counseling when it is needed most. The service is available, at no cost, to beneficiaries who receive a benefit of \$25,000 or more. PwC counselors are experienced Certified Financial Planners, Certified Public Accountants, attorneys, and personal financial specialists. PwC counselors do not and can not sell products; their objective is to help families understand and address financial decisions at a difficult time. They provide objective counseling on topics such as estate settlement, budgeting and taxes.

Technology Solutions for Benefits Staff:

Through LifeBenefits, Minnesota Life's website customized to the State of Michigan's plan, benefits staff will be able to access:

- Claims status, information updated daily
- ReportBuilder, a dynamic tool that allows users to create claims reports specific to their needs
- Weekly claims activity reports
- Secure e-mail and attachments
- Contact information for the account team
- eClaims, Minnesota Life's online claim submission tool

**(D) Financial**

- (1) **Premiums.** Premiums are paid by the State for employees, retirees, and dependents of retirees as described in Section (a). Employees pay optional dependent coverage premiums through biweekly payroll deductions, which are remitted to the carrier.

These premiums are intended to cover all active and retiree claims, the accidental death benefit, and retention

If the billed rates exceed claims and retention amounts, the excess is returned to the State at the end of each plan year.

The premium is paid to the carrier by the end of each pay period to fund claim payments. If a positive cash flow emerges, the State is paid interest on the cash flow. The cash flow interest is calculated by taking the total amount of premium surplus divided by two and then multiplied times the prevailing short-term interest rate. Conversely if a deficit is generated from collected premiums being less than paid claims, then the State would be charged a negative cash flow in the same manner. The Contractor holds the incurred but unpaid claim reserve.

The Contractor will credit interest on the same basis as used currently, at a rate equal to the average investment yield rate of 13-week treasury bills auctioned during the policy year.

The Contractor will establish a pending death claim reserve equal to the face amount of insurance when notified of a claim. Minnesota Life will use a basis similar to Part 1 of the IBNR reserve calculation under the previous contract's financial basis and will charge the plan for all claims that are known within 60 days after the plan year ends but not paid during the plan year. This includes both those claims that are paid during the 60-day period and those that are pending at the end of the 60-day period.

The Contractor will not charge the plan for an "unknown" claims reserve as in Part 2 of the previous contract's IBNR reserve calculation. Instead, any claims reported after the 60-day runout period will be included in the following policy year's calculation.

- (2) **Waiver of Premium.** The State self-insures employees who are subject to Disability Waiver of Premium. The eligibility requirement for authorization of Waiver of Premium is that the employee be totally disabled and in receipt of Long Term Disability, Social Security Disability, Workers' Compensation, or Duty or Non-Duty Disability Retirement Benefits. The Waiver of Premium allows continuation until age 65 of the same life insurance benefit as was provided as of the last day worked. After age 65, the benefit will reduce to 25% of the pre-65 coverage amount. Waiver of Premium claims are funded as they occur from the billed premium.

All actively-at-work clauses will be waived. Specifically, any individual covered under the State plan with the current carrier will be covered by the new carrier even if that individual is not at work when the new policy is effective. Individuals to be covered by the carrier will include:

- all disabled employees currently covered
- retirees currently covered
- any employees who are absent from work for any reason on the policy effective date
- any covered dependents of employees who are absent from work for any reason on the policy effective date.

- (3) **Conversion Charge.** The State currently pays a conversion charge for employees who convert to an individual policy from the group plan.
- (4) **Direct Pay.** The State allows employees who are laid off or on leaves of absence to continue to pay their life insurance premium for a 12- to 36-month period after the last day at work. The State collects these premiums with other group insurance premiums and remits them to the reserves in the State Treasurer Common Cash Fund. This is done for ease of accounting and assures the Contractor will not be burdened with this collection process. Such employees must be covered under any new policy.

- (E) Subcontracting.** Provisions on use of subcontractors are given in Article 2. The State expects that all essential services associated with this program will be provided directly by the Contractor, and that use of subcontractors will be minimal.



(F) Service Level Agreements/Performance Guarantees

The Contractor agrees to Service Level Agreements/Performance Guarantees as outlined in Article 1, Attachment F. The Contractor must ensure that the performance guarantees are measurable using the Contractor's standard management information systems for the claim team that services the State and its insured employees, retirees, and dependents.



- (G) Communication Materials.** The Contractor will prepare and cover the cost of all announcements, letters, notices, brochures, forms, postage, and other supplies and services for U.S. mail distribution to employee and retiree residences and State of Michigan offices. The State must approve drafts of all communication materials before use.
- (H) Audits.** The State intends to periodically (no less often than once every three years) perform on-site audits of plan administrators. Contractors will make records associated with the administration of the State plan available to, and must cooperate with, such auditors and audits as the State may designate.
- (I) Continuity of Coverage.** Coverage will be maintained for current State of Michigan participants and the actively-at-work provision must be waived.
- (J) Existing Assignment.** The Contactor must accept all existing assignments.
- (K) Beneficiary Forms.** The Contractor must accept all existing beneficiary forms.

1.2 Roles and Responsibilities

1.201 Contractor Staff, Roles, and Responsibilities

The following person is considered Key Personnel:

Lynn Gordon, Client Relationship Advisor, will have overall responsibility for the State of Michigan plan. In her role, Donna will consult on plan performance, including contract changes and financial reporting, and will help ensure satisfaction.

See Attachment B for organizational chart.

1.202 State Staff, Roles, and Responsibilities

The following State staff will be responsible for the day-to-day administration of the program:

<p>Name: Susan Kant Title: Plan Administrator Responsibilities: Overall responsibility for the Contract.</p>	<p>Name: Lauri Schmidt Title: Program Manager Responsibilities: Daily responsibility for the Contract.</p>
---	---

1.203 Other Roles and Responsibilities – Deleted/Not Applicable

1.3 Project Plan

1.301 Project Plan Management

The implementation plan will be determined at contract award. The Contractor is required to supply finalized plan within five working days of the contract award. All implementation plans are subject to the approval of the Department of Civil Service.

Implementation must be accomplished according to the agreed upon timelines. The Director of the Employee Benefits Division will determine acceptance of the implementation and will give final approval for the Contractor to begin providing services as identified in Article 1.104.

1.302 Reports

- (a) The Contractor shall provide monthly reports, within 30 days of month end, on death claims paid in the different categories of retiree, retiree dependents; employee, employee dependents; and accidental duty death.
- (b) The Contractor shall make an annual accounting report within 90 days of the fiscal year’s end on September 30 that provides a full accounting on the year’s activities including:
 - All premiums received, broken down by insured status (employee, employee dependent, retiree, retiree dependent) and plan coverage type.



- All death claims paid broken down by insured status (employee, employee dependent, retiree, retiree dependent) and plan coverage type.
- All charges for conversions with the names of persons converting and the amounts.
- All known claims between the year end and the reporting period that were not paid at year end.
- Accounting for the cash flow interest calculation, the duty death benefit, and the retention formula and charge. Claims should be identified as both paid and incurred.

1.4 Project Management

1.401 Issue Management

If the State notifies Contractor of any critical issues, Contractor must respond within one Business Day with an adequate and appropriate resolution and execution plan. If Contractor identifies any critical issues affecting Services, it must notify the Contract Administrator within one Business Day.

Donna Adams, Client Relationship Advisor, will be the day-to-day contact for the State's account. Donna has access to all departments in the Group Insurance division and can normally address issues by working with the appropriate individuals.

If an issue needs to be escalated, the following individuals will be brought in for advisement (in order of seniority):

- Kristi Fox, Director, Group Client Relationships
- Von Peterson, Vice President, Group Client Relationships
- Sue Ebertz, Vice President, Group Insurance Services
- Robert Olafson, Senior Vice President, Group Insurance
- James Johnson, Executive Vice President, Group Insurance

1.402 Risk Management – Deleted/Not Applicable

1.403 Change Management

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 Acceptance – Deleted/Not Applicable

1.6 Compensation and Payment

1.601 Compensation and Payment

All rates and charges quoted in bidder's response will be firm for the duration of the Contract, unless changes are agreed to in writing by both parties.

See Article 1, Attachment A for price sheet.

1.7 Additional Terms and Conditions Specific to this SOW- Deleted/Not Applicable



Article 1, Attachment A

Pricing

Biweekly Premium Rates:

Employee and Retiree:	Billed:	\$.213 per \$1,000
	Contract:	\$.269 per \$1,000

Dependent:	Plan F:	\$.20
	Plan G:	\$.60
	Plan H:	\$ 1.20
	Plan K:	\$ 4.00
	Plan L:	\$.75

Administrative Fee Per Claim: \$349 per claim

Other Charges: 1.50% of premium to cover state premium tax

Conversion Charges: \$60 per \$1,000 of converted coverage

Rate Guarantee Period: Five years with two optional one-year extensions

Interest Rates & Reserve Calculation Method: Minnesota Life will credit interest on the same basis as used currently, at a rate equal to the average investment yield rate of 13-week treasury bills auctioned during the policy year.

Minnesota Life will establish a pending death claim reserve equal to the face amount of insurance when notified of a claim.

Minnesota Life will use a basis similar to Part 1 of the IBNR reserve calculation under your current financial basis and will charge the plan for all claims that are known within 60 days after the plan year ends but not paid during the plan year. This includes both those claims that are paid during the 60-day period and those that are pending at the end of the 60-day period.

Minnesota Life will not charge the plan for an "unknown" claims reserve as in Part 2 of the current IBNR reserve calculation. Instead, any claims reported after the 60-day runout period will be included in the following policy year's calculation.

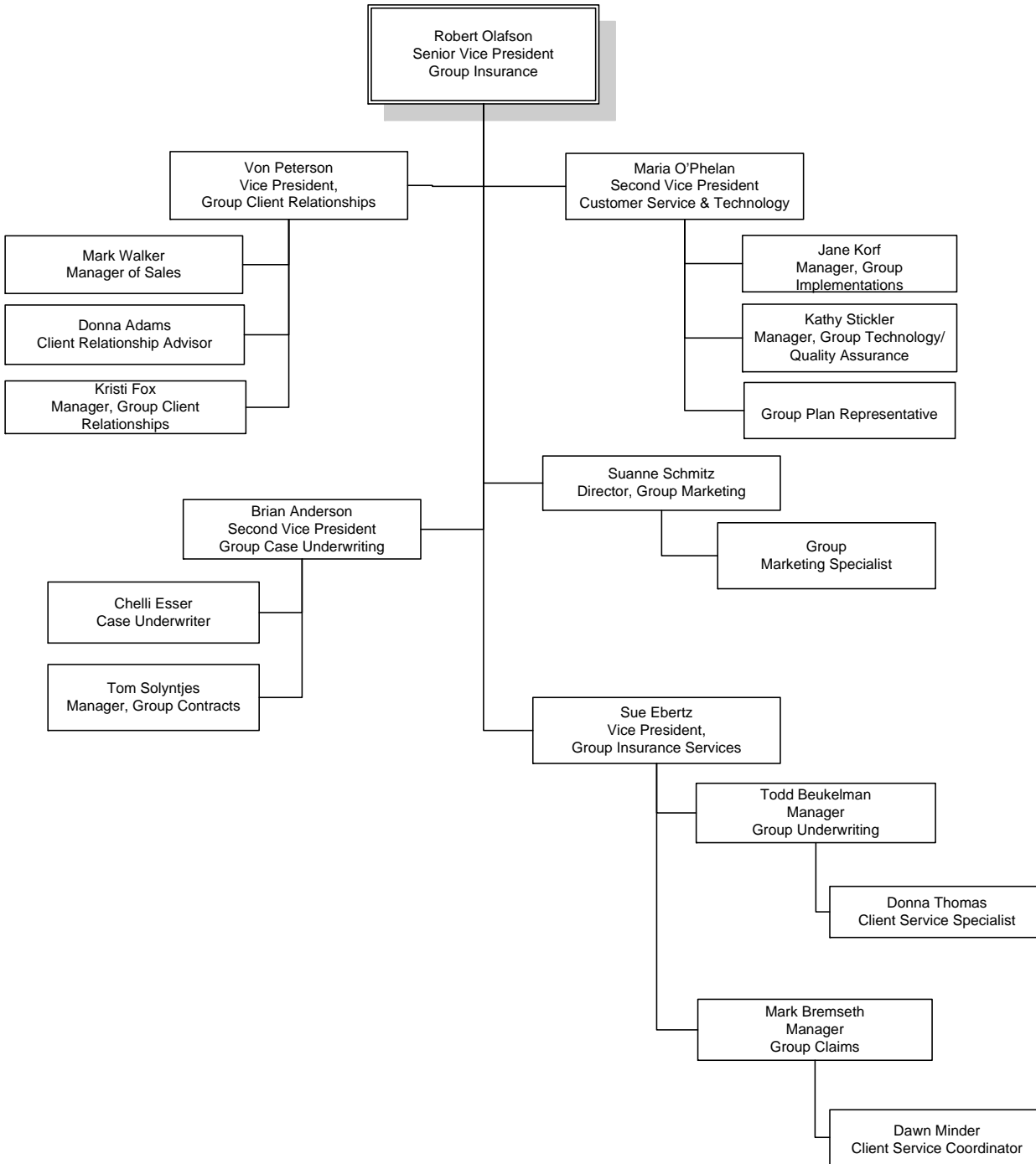
Assumptions & Qualifications:

The rates and fees included in this Contract assume that Minnesota Life will mail one certificate booklet to each active member and retiree when the plan is implemented. Minnesota Life will also mail one certificate booklet to each new active member during the contract period and will mail one new certificate booklet to each retiree upon retirement.

Minnesota Life assumes that any deficit remaining after premiums have been paid at the contract rate will be carried forward with interest for recovery in the following year.



Article 1, Attachment B
Organizational Chart, including Key Personnel





Article 1, Attachment C, D & E – Deleted/Not Applicable

**Article 1, Attachment F**

Service Level Agreements/Performance Standards

The Contractor agrees to Performance Standards as listed in this section. The Contractor must ensure that the performance guarantees are measurable using the Contractor's standard management information systems for the claim team that services the State and its insured employees, retirees, and dependents. Performance Standards include the following:

(1) Claim Turnaround Time

- The maximum period between receipt by the Contractor, with all information needed to finalize, and mailing of payment is expected to be no greater than five calendar days for 95% of all claims submitted by members, state representatives, or beneficiaries, and 10 calendar days for 100%. Requests for additional data shall be executed within the same standards.

(2) Claims Accuracy-Dollar Basis

- Claims processing accuracy (minimum of 98%) - The ratio of the total number of claims without errors (both payment and non-payment) to all claims processed. This is determined using the weighted average number of claims without errors in the sample applied to the population of processed claims.
- Financial payment accuracy (minimum of 99.9%) - The ratio of claims dollars paid accurately to all claim payments. This is determined using the weighted average dollar error in the sample applied to the population of processed claims.

The Contractor will not be liable for errors caused by the State, nor will the State be liable for errors caused by the Contractor. Monetary errors will be determined based on contracted rates or approved amounts by an examination of submitted claims. The errors will be established using statistically significant sampling methods resulting in a 95% confidence level with precision of +/- 3%. The State will include adjustments made up to four months after the close of the audited year.

(3) Account Service

- 100% of written inquiries that the Contractor receives from Employee Benefits Division staff or beneficiaries will be answered within five calendar days. The response time is calculated from the date of receipt by the Contractor to final resolution.
- 100% of phone inquiries will be returned within one business day.
- The inquiry telephone line for members will have no more than 3% abandonment rate.
- The inquiry telephone system must maintain sufficient staffing to respond to telephone calls by not allowing an average of over 30 seconds on hold.

(4) Implementation. Contractor shall guarantee that all services are implemented as proposed within specific timeframes.**(5) Amount of Performance Guarantees.** Contractor shall place 10% of its fees at risk for each of the preceding four service categories (Claim Turnaround Time, Claims Accuracy, Account Service and Implementation). For service categories with multiple guarantees, the 10% risk is prorated, with an equal portion of risk assigned to each bulleted guarantee. The maximum amount of fees at risk is capped at 40% for the first year and at 25% for following years under this Contract. Performance guarantees shall be measured quarterly, with a prorated portion of the penalty paid annually for any failure in a quarter.



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) Reserved.
- (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) Deleted.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

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

2.015 Contract Compliance Inspector

Upon receipt at DMB-PurchOps 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 Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Susan Kant
 Department of Civil Service
 Capitol Commons Center, 4th Floor
 PO Box 30002
 Lansing, MI 48909
kants@mi.gov
 (517) 373-1846

2.016 Project Manager – Deleted/Not Applicable

2.020 Contract Objectives/Scope/Background

2.021 Background – Deleted/Not Applicable

2.022 Purpose – Deleted/Not Applicable

2.023 Objectives and Scope – Deleted/Not Applicable

2.024 Interpretation – Deleted/Not Applicable



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 period begins July 16, 2008 through September 30, 2013. 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)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two additional one year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any 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 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.
- (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 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.
- (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.

2.052 PM Methodology Standards – Deleted/Not Applicable

2.053 Adherence to Portal Technology Tools – Deleted/Not Applicable

2.054 Acceptable Use Policy – Deleted/Not Applicable

2.060 Deliverables

2.061 Ordering

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.

2.062 Software – Deleted/Not Applicable

2.063 Hardware – Deleted/Not Applicable

2.064 Equipment to be New and Prohibited Products – Deleted/Not Applicable

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 – Deleted/Not Applicable

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 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 – Deleted/Not Applicable

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 unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service 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 weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals shall be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.080 Delivery and Acceptance of Deliverables- Deleted/Not Applicable

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 rates in the Contract. 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 the Contract, 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) Deleted.

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 the Contract. 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 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (b) **Taxes**
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 www.michigan.gov/dmb 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 – Deleted/Not Applicable

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).

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 the agreed upon 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 – Deleted/Not Applicable

2.104 System Changes – Deleted/Not Applicable

2.105 Deleted

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 – Deleted/Not Applicable

2.110 Records and Inspections

2.111 Records and Inspections

- (a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.
- (b) Examination of Records. Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven years following the creation of the material (collectively, the "Audit Period"), shall, upon 20 days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

**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 quarterly statements. If a balance remains after four quarterly statements, then the remaining amount will be due as a payment or refund within 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 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities- Reserved2.130 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 www.michigan.gov/dit. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved2.150 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 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 Ownership**

Ownership of Work Product by State. All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.162 Source Code Escrow – Deleted/Not Applicable**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 – Deleted/Not Applicable**2.165 Standard Software – Deleted/Not Applicable****2.166 Pre-existing Materials for Custom Software Deliverables – Deleted/Not Applicable****2.167 General Skills – Deleted/Not Applicable**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 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) Deleted/Not Applicable
- (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 years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties – Deleted/Not Applicable

2.173 Equipment Warranty – Deleted/Not Applicable

2.174 Physical Media Warranty – Deleted/Not Applicable

2.175 Standard Warranties – Deleted/Not Applicable



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 www.michigan.gov/dleg.

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 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected 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 INSUREDS 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 INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

(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 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 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 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 tortuous 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 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 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 - Deleted/Not Applicable

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.



If 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 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, workarounds 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 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 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 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 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 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 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 270 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 vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.



- (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.
- (c) Reserved.
- (d) 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 in the Contract. 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 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 – Deleted/Not Applicable

2.240 Deleted

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 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 60 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 www.michigan.gov/mdcs.

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 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 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 Purchasing Operations.
 - (2) Contractor shall also notify Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



- (3) Contractor shall also notify Purchasing Operations within 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 – Deleted/Not Applicable

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

Contractor:
Minnesota Life Insurance Company
Attn: Brian C. Anderson
400 Robert Street North
St. Paul, MN 55101

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 this section 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.

2.306 Prevailing Wage – Deleted/Not Applicable

**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 – Deleted/Not Applicable

2.310 Deleted/Not Applicable

2.320 Extended Purchasing- Deleted/Not Applicable

2.330 Federal Grant Requirements- Deleted/Not Applicable