Form No. DTMB-3521 (Rev. 7/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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. 3
to
CONTRACT NO. 071B8200293
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Emphasys Software	George Rodriguez	grodriguez@emphasys-software.com
3890 Charlevoix Ave, Ste. 370	**PHONE**	**CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)**
Petoskey, MI 49770	(305) 599-2531 x6634	4382

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MSHDA	Vanessa McDonald	517-241-2012	mcdonaldv@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: Michigan State Housing Development Authority Financial System

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 5, 2008	**September 4, 2011**	**3, 2 Year Options**	**September 4, 2015**

PAYMENT TERMS	DELIVERY TIMEFRAME
N/A	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☒ Yes ☐ No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	2 years	☐		**September 4, 2017**

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$8,329,438.00	$0	**$8,329,438.00**

DESCRIPTION: Effective September 4, 2015, the State exercises the final two-year option for maintenance and hosting at the firm fixed prices shown in the attached cost table. All other terms, conditions, specifications, and pricing remain the same. Per vendor, agency and DTMB Procurement approval.

Maintenance and Hosting Costs
9/5/2015 – 9/4/2017

Item #	Description	9/5/2015 – 9/4/2016	9/5/2016 – 9/4/2017	Total Cost
1	***Module Annual Maintenance/Help-desk Fees***			
	Asset Management (Prolink)	$ 71,261.20	$ 73,755.34	$145,016.54
	Contract Administration (CGI)	$ 36,877.66	$ 38,168.38	$75,046.04
	Finance (General Ledger, Accounts Payable, Bank Book, Financial Explorer)	$ 39,216.73	$ 40,589.32	$79,806.04
	Satori	$ 11,248.92	$ 11,642.63	$22,891.55
	Cash Management	$ 8,000.00	$ 8,280.00	$16,280.00
	Investment Management	$ 7,000.00	$ 7,245.00	$14,245.00
	Multifamily Loan Servicing	$ 9,340.83	$ 9,667.76	$19,008.60
	Developer Portal	$ 5,737.62	$ 5,938.43	$11,676.05
	Funding Application	$ 6,885.14	$ 7,126.12	$14,011.26
	IM&C	$ 17,212.85	$ 17,815.30	$35,028.14
	Certification Online	$ 6,042.35	$ 6,253.83	$12,296.18
	Multifamily Compliance	$ 24,383.25	$ 25,236.67	$49,619.92
2	***Annual Hosting Fees***	$ 300,000.00	$ 300,000.00	$600,000.00
	TOTAL	**$ 543,206.55**	**$ 551,718.78**	**$ 1,094,925.33**

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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. 2
to
CONTRACT NO. 071B8200293
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Emphasys Software 3890 Charlevoix Ave, Ste. 370 Petoskey, MI 49770	Mike Byrne	mbyrne@emphasys-software.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 968-6884 x 6628	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Mark Lawrence	517-241-1640	Lawrencem1@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Michigan State Housing Development Authority Financial System**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 5, 2008	September 4, 2013	3, 2 Year Options	September 4, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☒ Yes	☐ 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
☐ No ☒ Yes	☒	☐	2 Years	September 4, 2015

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$652,976.00	$8,329,438.00

Effective September 5, 2013, this Contract is exercising a two year option to September 4, 2015 and is INCREASED by $652,976.00.

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

Per vendor agreement and DTMB Procurement approval.

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET **October 13, 2011**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO.1
TO
CONTRACT NO. 071B8200293
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Emphasys Software** **3890 Charlevoix Ave, Ste. 370** **Petoskey, MI 49770** **mbyrne@emphasys-software.com**	TELEPHONE(800) 968-6884 x6628 **Mike Byrne** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1640 **Mark Lawrence**
Contract Compliance Inspector:Sara Williams **Michigan State Housing Development Authority Financial System**	
CONTRACT PERIOD: From: **September 5, 2008** To: **September 4, 2013**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective September 5, 2011, this contract is exercising a two year extension option. The new contract end date is September 4, 2013. Please also note that the buyer has been changed to Mark Lawrence. All other terms, conditions, pricing and specifications remain the same.

AUTHORITY/REASON(S):

Per vendor and agency agreement and DTMB Purchasing Operations approval.

TOTAL ESTIMATED CONTRACT VALUE: $7,676,462.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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. 071B8200293
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Emphasys Software** **3890 Charlevoix Ave, Ste. 370** **Petoskey, MI 49770** **mbyrne@emphasys-software.com**	TELEPHONE(800) 968-6884 x6628 **Mike Byrne** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-3993 **Dale N. Reif**
Contract Compliance Inspector:Sara Williams **Michigan State Housing Development Authority Financial System**	
CONTRACT PERIOD: From: **September 5, 2008**	To: **September 4, 2011**
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB #071I8200007, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.** **Estimated Contract Value: $7,676,462.00**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I8200007. Orders for delivery will be issued directly by the Michigan State Housing Development Authority through the issuance of a Purchase Order Form.

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

FOR THE CONTRACTOR:	**FOR THE STATE:**
Click to type name of firm here Firm Name	Signature
Authorized Agent Signature	Click to type buyer's name, Buyer Name/Title
Click to type name of agent; or, delete this box Authorized Agent (Print or Type)	Click to type buyer's division name Division Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Michigan Department of Labor and Economic Growth
Michigan State Housing Development Authority MSHDA
Financial System

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

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Appendix A – Personnel Information Sheet
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Article 1 – Statement of Work (SOW)

1.00 Project Identification

1.001 Project Request

The purpose the contract is to provide a Commercial Of The Shelf (COTS) solutions for information management and processing application for financial management (to include General Ledger, Accounts Payable, and Cash Management), multifamily lending, multi-family mortgage servicing, asset management, allocation of LIHTC (Tax Credit), and compliance operations for the Michigan State Housing Development Authority (MSHDA), and Performance-based Contract Administration.

1.002 Background

The Michigan State Housing Development Authority (MSHDA) is the 41-year-old state authority that has as its mission to provide financial and technical assistance through public and private partnerships to create and preserve decent, affordable housing for low and moderate-income Michigan residents.

MSHDA acquires its funds through Federal government programs (e.g., HUD), state government programs, and private investors (e.g., through the sale of bonds), and then provides benefits through multifamily loans, tax credits, single family loans, home improvement loans, Section 8 rental assistance, and community development grants and technical assistance programs. These benefits are generally provided through other entities, such as developers, banks, landlords, and local communities and development agencies.

MSHDA is currently using a financial/property management system called MITAS. The term of the contract with our current Contractor is nearly completed. For information on the current system, see: http://www.michigan.gov/mshda/0,1607,7-141-8002_34213---,00.html

The system will be used by MSHDA executives and staff at two office locations: 735 E Michigan Ave. Lansing, Michigan 48912 with approximately 250 employees; and 3028 W Grand Blvd. Suite 4-600, Detroit, Michigan 48202 with approximately 50 employees. Additional users of the system include:

- Michigan Department of Information Technology
- Contracted property inspectors
- Housing partners
- General public

1.1 Scope of Work and Deliverables

1.101 In Scope

The Contractor will provide a Commercial Off The Shelf (COTS) package that provides an integrated solution for processing:

- Financial data (General Ledger, Accounts Payable, Cash Management, and Investment Management)
- Asset Management
- Multi-Family Loans
- Multi-Family mortgage Servicing
- HR employee expenses W-2's
- Compliance
- Tax Credit
- Section 8
- Performance-Based Contract Administration.

The solution will provide a majority of the functionality requested in the General Requirements (see appendix E) and Functional Requirements (See appendix F). The solution must allow incorporation of process setup that is

specific to MSHDA, and customizations to incorporate the functionality from the General Requirements and Functional Requirements that does not come standard with the COTS solution. MSHDA does not require that the Contractor own all software modules, only that the entire solution provides the necessary functionality and integration. The solution must be vendor-hosted.

The contractor will conduct a thorough review of the requirements outlined in the General Requirements and Functional Requirements, and match them with MSHDA's vision for the future and the capabilities presented in the new proposed system. The Contractor will facilitate discovery sessions that will enable MSHDA's team to fully understand the capabilities of the solution and envision how these features, functions, and capabilities can meet the current business needs, and anticipate and prepare for future requirements.

The Contractor will provide the following services for the complete and successful implementation of an application system providing the functionality required for the State's business operations for MSHDA. This project consists of the following components:

- Identification, Verification and Validation of business requirements
- A Contractor hosted solution to include procuring, installing and maintaining application server(s) and other required hardware. The solution must include production, development, and test environments. The development and test hardware/operating system environment must resemble the production environment as closely as possible.
- Operations services for equipment at the Contractor's site
    - Systems management
    - Disaster recovery
    - Security administration services
    - Storage services
    - Backup and off-site retention
- Minimum: Daily incremental backups retained one month, weekend full backups retained three months, month-end full backups retained six months
- Maintenance - Maintenance is defined as repair or replacement services provided after the expiration of the warranty period necessary to identify and repair software malfunctions in order to return the system to its original operating condition. Maintenance also includes an agreement to provide an annual renewable software subscription to include future upgrades (both major and minor revisions of the application) and ongoing Contractor product support.
- Support - Help Desk and Technical
- Transition of business operations to the new equipment, including Migration and Integration
- Procure and Install software
- Application design and development
- Services to implement the application, including
    - Project management
    - System administration
    - Configuration
    - Customization
    - Modification
    - Interfaces
    - Data conversion
    - Integration
    - Testing
- Knowledge transfer to State staff
- Training - Train the trainer, End user training and Technical training
- Documentation, to include online help to the screen level, user manuals and technical manuals

1.102 Out Of Scope

Business process re-engineering services are out of the scope of this Request for Proposals.

1.103 Environment

The Contractor will conform to State IT policies and standards. The Contractor must formally request exceptions to State IT policies and standards in accordance with MDIT processes if they believe advantages can be gained by slight variations. Formal approval by the State is required before these deviations can occur.

The links below provide information on State of Michigan IT strategic plans, current environment, policies, and standards.

- Strategic Plan: http://www.michigan.gov/dit/0,1607,7-139-30637-135173--,00.html
- Enterprise Policies, Procedures and Standards: http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html
- The State's State Unified Information Technology Environment (SUITE) methodology must be followed: http://michigan.gov/suite
- Information regarding the State's information technology architecture and standards for hardware, database applications, network hardware and monitoring tools, identity management/authentication and development tools may be found at: http://www.michigan.gov/dit/0,1607,7-139-34305---,00.html.

MSHDA has other service areas within the agency, which currently have their own systems to support their activities. Among them are Community Development Grants, Single-Family Loans, Single Family Mortgage servicing, Supportive Housing Loans, Community Assistance, & Existing Housing administration. The proposed system must be capable of interfacing and providing/receiving file transfers of data between these systems. The other systems are Contractor-supplied systems with standard import and export data features.

Process Environments

The Contractor may combine the Development/training and Testing environments on the same server(s); however, the Production environment must be physically separate from the other environments. The Development/training environment hardware and Operating System software platforms must mirror the Production environment for the life of the contract. The Testing environment hardware and Operating System software must match the Production environment as closely as possible, except where being used to test new hardware or Operating System software.

The Contractor will design redundancy into the system to handle failure situations and make system maintenance possible without experiencing prolonged production downtime of over four hours. In the event of a prolonged outage due to hardware failure, other servers are available to temporarily run the application. Contractor may provide additional alternatives that will meet the redundancy requirement and will provide a cost savings to the State.

1.104 Work And Deliverable

Prior to delivering any of the Physical Deliverables or Services to the State mentioned in the Statement of Work, the Contractor will first perform all required quality control activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order and the Deliverable/Service has all Critical Security patches/updates applied.

Services to be Provided - The Contractor will install the system and have it in full operation within (1) one-year of contract signing according to the timeline mutually agreed upon within the Project Plan. The Contractor will provide the tasks defined in this section. Unless otherwise specified, the professional fees for contractor services will be paid on a time and materials basis. These services will be billed by the contractor on a monthly schedule using the hourly rates shown in Appendix G. The invoice will detail the specific contractor, the specific deliverable, the specific dates and times, and the fee associated with the invoice line item. These fees have an overall cost limitation as shown in Appendix G.

Project Initiation / Kick-off

During Project Initiation / Kickoff, the Contractor Team will perform services needed to initiate the project including project Kick-Off with MSHDA. This includes requirements gathering, verification, and validation as defined below. The Contractor Team will identify and confirm overall project strategy and scope. This will ensure that policies and procedures are in place so that each phase maintains the proper business focus and receives timely management approval.

Throughout the project, the Contractor Team will rely on several different channels of communication to ensure that each person involved has sufficient information to perform their responsibilities and to eliminate any

surprises. These channels will be defined in a Communications plan created by the Contractor, and will include weekly team status reports and meetings, scheduled reviews of both interim and formal deliverables, periodic risk and issues management meetings, and regular project Steering Committee meetings. The Project Initiation and Kickoff timeline is detailed in Attachment B.

Requirements Gathering, Verification and Validation

The Contractor shall describe and follow their methodology to conduct and document requirements gathering, verification and validation sessions with MSHDA. The requirements validation activities must include, but are not limited to:

- Review and analysis of current business operations.
- Data requirements
- Network WAN, LAN, and telecommunications requirements
- Hardware and operating system requirements and technical specifications.
- The minimum software, hardware and system requirements necessary for any State information technology resource that will interface with the operation of the Contractor's system

The Contractor must ensure the requirements meet federal, state and industry standards at all times. The Contractor must clarify any unclear or ambiguous requirements, which could have an impact on the implementation of the equipment and software.

Upon completion of the project initialization as outlined above, the Contractor and MSHDA will collectively gather information to identify and confirm MSHDA's functional, data conversion, reporting, and general business needs that the system will address. The first part of this process focuses on the following areas:

- Contract Administration
- Asset Management
- Core Financials (G/L, A/P, A/R, Bank Book) and Investments
- Multifamily Loan Servicing
- Multifamily and Tax Credit Compliance
- Multifamily Allocation

The estimated timeline for Project Initiation can be found in the Preliminary Project plan in Appendix B.

Project Planning

Final Project Plan Submission

The Contractor will provide a Final Project Plan within 90 Business Days of contract signing, including the necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State. This Project Plan will replace the Preliminary Project Plan in Appendix B, and will be the guiding document for completion of the implementation project. The project plan will be created by the Contractor Project Manager, with assistance from the Agency Project Manager, based on input from the Contractor Team and Agency staff.

Deliverables from the Project Planning Stage will include:

- Defined scope of work
- Refined project plan with implementation timeline and key milestones
- Detailed implementation approach with specific role responsibilities
- Customization expectations
- Risk and issues log
- Change management recommendations to secure employee/contractor buy-in
- Communications Plan
- Network assessment log
- List of system interfaces (i.e., financials, check processing, etc.)
- Data status for all legacy modules
- Acceptance Test Plan (see details below)

Acceptance, Installation, Integration, Deployment

Acceptance Test Plan
All modules must be tested to verify its compliance with the specifications set forth in this Contract and in the Requirements Document. The basis for acceptance shall be documented in an Acceptance Test Plan, which shall be developed by the Contractor and subject to review and acceptance by the MSHDA Project Manager. Both parties must mutually agree upon modification and changes. Tests will not be considered valid tests unless the Acceptance Test Plan has received written State approval. All tests will be monitored by the State and only State monitored tests shall be considered valid. Acceptance testing will not commence before the State approves the Acceptance Test Plan.

All tests executed shall be documented according to the approved Acceptance Test Plan. All records kept during the Testing and Acceptance Process shall be made available to the State at any time and handed to the State as part of the deliverable documentation. Documented test results shall consist of a Test Checklists that is based on the specification and functional criteria associated with the Requirements Document and a Project Checklist which is test items that failed and require corrective action or resolution.

Acceptance testing involves testing for product functionality after the application has been fully configured and the existing data has been converted into Contractor's solution. This level of testing ensures that the application provides the desired functionality. Acceptance testing also involves a technical component to ensure satisfactory performance of the Contractor's solution.

A formal approval signoff by the Agency project Manager is required for completion of this deliverable.

Delivery of Equipment
The Contractor shall include a diagram of their Hardware and Network infrastructure within 60 Business Days of contract signing. (See Appendix D). It is an overall detailed architectural diagram including detailed graphics displaying the listed hardware and its relative placement in the architecture. The Contractor shall mark the communication channels between hardware units, identifying things like encryption where appropriate. The Contractor must identify any constraints or limitations with respect to the physical proximity of system components to one another or to user locations. This diagram must be updated and communicated to the MSHDA Project Manager whenever a change occurs.

Technical Architecture System Design Plan
Vendor Hosted Security Requirements
The Contractor must meet State of Michigan standards for housing and processing data. The policies that must be adhered to are listed below:

http://www.michigan.gov/documents/dmb/1310_183772_7.pdf
http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf
http://www.michigan.gov/documents/dmb/1325_193160_7.pdf
http://www.michigan.gov/documents/dmb/1335_193161_7.pdf
http://www.michigan.gov/documents/dmb/1340_193162_7.pdf
http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf

Equipment will be installed and made operable according to the timeline in the Final Project Plan. The Contractor is responsible to test the equipment and software to ensure that the following requirements are satisfied:

- **Response time:** The system must comply with reasonable response time parameters. Online response time must be three seconds or less, 95% of the time as measured from the time the request arrives at the web server to the time the final response leaves the web server.

- **The Contractor system and all subcontractor systems associated with this solution will meet the following uptime associated Standards:**
  - Connection: Minimum uptime: 99.9%.
  - System availability: 24x7x365.
  - An Uninterruptible Power Supply must protect all servers.
  - All servers should have dual network cards for fail-over.

- All servers must be located in a security locked room accessible only by authorized personnel
- All outside connections must pass through an approved State of Michigan Firewall.
- All servers are protected by State of Michigan approved Anti-Virus software.
- All servers must pass a State of Michigan approved vulnerability scan, with remediation in 48 hours.
- All servers have their OS upgraded upon release with ample time allowed for bug fixes.

- **Disaster Recovery**: The 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.

  The Contractor must prepare and maintain a disaster recovery strategy document, approved by the State, within 60 Business Days of Contract signing and must include:
  - The strategy to recover to a known good state & resume after a site-loss disaster.
  - The ability to recover online transactions since the last backup in a non-site-loss disaster
  - An annual demonstration of the ability to recover full functionality to another hosting site
  - Off-site transport of system and database backups

  The Contractor must provide a document indicating the strategy to maintain system availability in the event of the loss of one or more system components. This strategy will be tested annually, with the results provided to the MSHDA Project Manager. The Contractor must allow a MSHDA representative site inspection if requested.

- **Security:** Contractor must describe the security for the IT environment. These documents (individual or combined) must be delivered to the MSHDA Project Manager within 60 Business Days of Contract signing. Providing that the security provisions are acceptable to the State of Michigan, the Contractor must ensure that the IT environment adheres to acceptable security standards for the duration of the engagement.

Formal approval signoff by the Agency Project Manager is required to complete this deliverable.

Delivery of Software

The contractor will deliver a copy of the software to the Agency. This software will be on a readable media, and will contain the latest upgrades and enhancements. Formal approval signoff by the Agency Project Manager is required to complete this task.

Installation of Base Software

The contractor will install the base software, and be able to demonstrate that is is accessible and workable in the hosted environment. The Contractor solution will be a software product that will be integrated effectively into its current technical environment and that will continue to do so as this environment evolves. The Contractor must provide a detailed description of the software infrastructure and versions such as database, operating systems, and Contractor applications. The Contractor will provide an initial description of the proposed architecture, technology standards, programming environment and a network diagram. These diagrams will be updated and supplied to the MSHDA Project Manager each time a change occurs.

The Contractor will notify the MSHDA Project Manager of all proposed software updates and upgrades. All updates and upgrades will be loaded into the Test environment and tested by the Contractor and MSHDA before they are copied into the production environment, unless MSHDA agrees to bypass this step on an individual basis. The Contractor will supply release notes to the MSHDA Project Manager of all software updates and upgrades as well as a scheduled time for the upgrade. The release notes must be sufficient to adequately explain the reason for the update or upgrade, and provide specifics on how the software should be tested.

If the Contractor cannot meet these policy standards, a written acknowledgement must be made, with a plan for remediation of the unmet issue. The Contractor and subcontractor adherence to these policies is subject to audit by the State of Michigan.

Interfaces
An initial list of interfaces is found in Appendix C. These interfaces will be created as part of the base implementation. Payment for the creation of defined interfaces will not exceed the price for Interfaces indicated in Appendix G. Additional interfaces may be identified over the term of the contract, which will be priced and completed as new customizations.

Customizations of Software
The contractor will provide the setup and customizations needed for the implementation of the system as defined and noted in the Final Project Plan. The setup and customizations will be thoroughly tested by the contractor prior to delivery to the Agency. The Agency will also test the setup customizations to ensure that they meet the requirements defined in the Project Initiation Phase. Formal approval signoffs are required by affected Agency divisions, and the Agency Project Manager for each module that is customized, to complete this deliverable.

Final Conversion of Data
Acceptance Plan
Within one hundred twenty (120) days of Contract Effective Date, Contractor will provide a Conversion Acceptance Test Plan that will be used for determining Final Acceptance of the fixed-price conversion of data. Contractor will work with the State to formulate a Data Conversion Plan that best meets the needs and minimizes the risks of the organization as it relates to data loss, downtime, confidentiality and duplication of effort. The Data Conversion Plan should include conversion preparation (including conversion rules, dependencies and acceptance criteria), risk associated with the data conversion and any exception processing that may be required, data cleansing processes and procedures, conversion products (staff required, time frames and conversion verification procedures) and the pilot test for the data conversion.

The MSHDA project team or designated personnel will review the converted data for errors. The MSHDA project manager and division subject matter experts will report any errors discovered during the review process to the Contractors Project Manager.

Data Conversion and Migration
In accordance with the approved Project Plan, the Contractor will be responsible to convert and migrate the data in the following MITAS systems to the new system:

- Full financial data
- Complete Asset Management data
- Complete Multi-Family data
- Complete Section 8 data
- Complete Legal/Compliance data
- Complete Loan servicing data (Multi-Family Mortgage Servicing)
- Employee demographic data

The MSHDA project team or designated personnel will begin to review the migrated data and the requested changes in the new database for errors. The MSHDA project manager and division Subject Matter Experts will report any errors discovered during the review of the changes to the Contractors Project Manager. Formal approval signoffs are required by affected Agency divisions, and the Agency Project Manager for each dataset that is converted and migrated, to complete this deliverable.

All MSHDA data that resides on the vendor hosted database servers are the property of the MSHDA Agency. MSHDA may request an electronic copy of the data on a separate medium at any time.

Testing
The Contractor will correct all test errors, implement corrections, and re-execute tests in their entirety. The Contractor will accept all errors and is responsible to correct and request a re-test until the State is satisfied with

the results. During testing, MSHDA staff and the Contractor will collectively measure response time. The Contractor will request the State's Project Manager approval of the content and completeness of the test scripts.

Training and Knowledge Transfer
The Contractor will provide thorough training for all staff performing project or operation activities. Functional areas/user groups will organize staff Training. Each group will be trained just prior to Go-Live so that staff can put their knowledge into immediate production. The timeline for this training is contained in Attachment B.

Deliverables from the Training and Knowledge Transfer phase will include:

- Training Class Itineraries
- User Procedures
- End User Training Content
- Preliminary Cutover Plan
- Go-Live Readiness Assessment
- Trained Staff
- User Training Acceptance

Go-Live

Go-live is defined as using all modules of the system in a production environment for daily business operations. This deliverable begins when the previous work and deliverables have been successfully completed, and the system and user setup is complete and available for all appropriate users. Formal approval signoff is required by the Agency Project Manager to complete this deliverable.

This deliverable also begins the final testing of the system. A parallel test of results between the current system and this Contractor system solution will be run for a period of time agreed upon by the Contractor and the Agency Project Manager. During this time an Issues List will be created to log all problems noted with the system.

Final Accceptance/Completion of Go-Live Issue List
This is the final milestone deliverable. It is completed when the Agency users have used the system for the agreed upon parallel testing time not to exceed 6 months unless mutually agreed, and all Go-Live issues have been addressed to the Agency Project Manager's satisfaction. Formal approval signoff is required by the Agency Project Manager to complete this deliverable.

Maintenance

Go-Live Transition and Post Go-Live Support
In preparation for Go-Live (defined as using all modules of the system in a production environment for daily business operations), there are many tasks that must be completed. Many of these tasks are dependent on one another, such as closing the legacy system to data changes prior to the final extraction for conversion into the new system. These tasks are coordinated by the Project Managers. These tasks include activities related to conversions, authorizations, system administration, network administration, workstation administration, peripheral device management, training, change management, transitional policies and procedures, communications, help desk, and other miscellaneous items that should be managed in the transition to Go-Live. During the Implementation stage, the Contractor and MSHDA "super users" train end users to provide them with the "just-in-time" training required to perform their jobs in the Contractor software production environment. This approach ensures that users retain the knowledge from training by putting that knowledge immediately to work on the new system. Attachment B displays the timeline for Go-Live to Project Close-Out.

After Go-Live, the Contractor then transitions MSHDA to our Customer Care team for ongoing support. Then, the Contractor and MSHDA staff will finalize any acceptance testing needed in order to closeout the overall project.

Deliverables from the Go-Live and Go-Live Support Include:

- Fully Live Environment
- Project Review
- Final Acceptance
- Go-Live acknowledgment with Staff

Help Desk support
The contractor will provide Help Desk support Monday through Friday from 8:00 am to 6:00 pm Eastern Standard Time (EST). The Contractor will respond to calls for system support as follows:

Critical (System outage) – Contractor response within one hour, plan of action within 2 hours, resolved within 4 hours.
High (Major modules down, some services available) Contractor response within 2 hours, resolved within one day.
Moderate (Majority of application is up, some services down) Contractor response within 4 hours, resolved within three workdays.
Low (Limited problem with no major disruptive ramifications) Contractor response by next day, resolved within one week, or to be considered for future customization.

The Contractor will provide a single point of contact for the reporting of all support issues associated with the contractor solution. This single point of contact will log the support issue and follow-up to ensure that the issue is addressed in the response parameters shown above.

1.2 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

Personnel and Organization
The Contractor will provide an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart, Article 1, Attachment B.202, must show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work. The chart must be updated and communicated to the State when changes occur.

The Contractor will provide resumes for staff, including subcontractors, who will be assigned to the Contract, using the Personnel Information Sheet in the Appendix A of this document. Qualifications will be measured by education and/or experience. Emphasis will be placed upon the qualifications of the Contractor's Project Manager and the Manager's dedicated management time as well as that of other Key Personnel working on this project. The Contractor will commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the State.

The Contractor will identify a Contract Administrator. The duties of the Contract Administrator shall include, but not be limited to: i) supporting the management of the Contract, ii) facilitating dispute resolution, and iii) advising the State of performance under the terms and conditions of the Contract. The State reserves the right to require a change in the current Contract Administrator if the assigned Contract Administrator is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor will provide a project manager to work closely with the designated personnel from the State to insure a smooth transition to the new system. The project manager will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Communicates project status according to the Communications Plan
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback

- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

The Contract Administrator and project manager shall be identified as Key Personnel subject to the State's interview and approval.

Background Checks

The Contractor's staff must be able to pass a security clearance check conducted by the Contractor. Contractors must present certifications evidencing satisfactory background checks and drug tests for all staff identified for assignment to this project. The Contractor is responsible for any costs associated with ensuring their staff meets all requirements. Please see Section 2.130 for Security requirements.

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work. A list of Contractor staff assigned to this project and their roles is listed in Appendix A.

1.202 State Staff, Roles, And Responsibilities

The State project team will consist of a Steering Committee, Executive Subject Matter Experts (SME's), project support, and a project manager. The MDIT and MSHDA are the project co-sponsors and will serve on the Steering Committee, with the MSHDA Executive Business Analyst serving as the Chair. The project co-sponsors will identify the additional members of the Steering Committee. MDIT will provide a MDIT Project Manager. MDIT will be responsible for the State's infrastructure and work together with the Contractor in determining the system configuration.

The project steering committee will provide the following services:

- Approve the project schedule
- Authorize modifications for scope, resources, and budget of the project
- Ensure senior management commitment to the project
- Act as a final arbiter on proposed changes that significantly affect the business interests of the State

The SME representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. Division Managers, designated Primary Users, and Division Business Analysts will be the primary SME's. The Executive SME's will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve minor deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make minor implementation decisions, as identified by The Contractor's project manager, within 48-hours of their expected decision date.

MSHDA's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate MSHDA's resources necessary for the project
- Facilitate coordination between various external Contractors Facilitate communication between different State departments/divisions (IT-Networking, Integrated Services, Administration, Personnel Department, Accounting, Administration etc.)
- Milestone acceptance sign-off
- Resolution of project issues
- Escalation of outstanding/high priority issues
- Utilize change control procedures
- Conducting regular and ongoing review of the project to confirm that it meets original objectives and requirements

- Documentation and archiving of all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings

Issues shall be escalated for resolution from level 1 through level 4, as defined below:

Level 1 – Business leads
Level 2 – Project Managers
Level 3 – Executive SME's
Level 4 – Steering Committee

In addition, the following State personnel/resources may be required at stages of the project. The Contractor's Project Manager will make every effort to provide the State with advance notice of when those services may be required.

- Systems Analyst
- Application Administrator
- User Implementation Coordinator
- Network Administrator
- Database administrator
- Remote access to test database environment
- Telecom support

The MDIT is responsible for the administration of the services within the contract. The MDIT Program Manager is the contact for all issues pertaining to the execution of services under the contract. The MDIT Program Manager shall be:

Rick Kroeg
Michigan Dept. of Information Technology
Agency Services, MSHDA Support
7285 Parsons Dr, 1SC
Lansing, MI 48913
Phone: 517- 636-0497
E-mail: kroegr@michigan.gov

The State will provide the following resources for onsite Contractor's use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- PC workstation
- Printer
- Access to copiers and fax machine
- Parking

1.203 Other Roles And Responsibilities

Oversight of the entire project will ultimately be the responsibility of the MSHDA Executive Director. The MSHDA Executive Director will set the high-level goals and direction for the project, and present progress and major issues to the MSHDA Board of Directors.

1.3 Project Plan

1.301 Project Plan Management

The Contractor shall provide an initial project plan including a complete schedule of all hardware, software, testing and training events. The Contractor will be required to submit a final project plan after execution of the contract. Included as a part of the project is to be an implementation plan.

A. Orientation Meeting

1. Upon ten (10) calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract.
2. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor.
3. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

B. Performance Review Meetings
1. The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract.
2. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and The Contractor.
3. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

C. Project Control
1. The Contractor will carry out this project under the direction and control of MSHDA and the Department of Management and Budget, in coordination with the Department of Information Technology.
2. Within five (5) working days of the award of the Contract, the Contractor will submit a work plan to the State project manager for final approval. This work plan must be in agreement with section 1.104 Work and Deliverables, and must include the following:
   a. The Contractor's project organizational structure.
   b. The Contractor 's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
   c. The project breakdown (work plan) showing sub-projects, activities and tasks, and resources required and allocated to each.
   d. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the work plan.
3. The Contractor will manage the project in accordance with the PMBOK® (Project Management Body of Knowledge from the Project Management Institute) and the state's Project Management Methodology (PMM). Methodology is available at www.michigan.gov/projectmanagement.
   a. The Contractor will use MS Project or another mutually agreed upon automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract.
   b. The Contractor shall supply the following reports during the course of the Contract:
      i. Staffing tables with names of personnel assigned to Contract tasks.
      ii. Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) calendar days, updated semi-monthly).
      iii. Actual time spent on each task and revised estimate to complete where applicable.
      iv. Graphs showing milestones, critical events, dependencies, and decision points.
      v. Progress, issues, issue resolutions.

1.302 Reports

Reporting formats must be submitted to MSHDA's Project Manager for approval. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

Reports to be furnished by The Contractor:

- Weekly Project status
- Updated project plan
- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Schedule status
- Action Item status
- Issues
- Change Control
- Repair status
- Maintenance Activity

1.4 Project Management

The Project Management Methodology will assist the project manager in meeting project-related challenges by providing guidance on the application of project management techniques within a framework that recognizes the interactions between a project and the related organizational environment.

The Project Management Methodology will minimize risks and uncertainties by:

- Defining standard processes and techniques that can be applied to all types of projects
- Following a consistent, structured approach
- Facilitating continuous stakeholder involvement and reviews
- Establishing effective management controls and procedures
- Assuring knowledge transfer takes place
- Following a pre-established forum and process for acceptance

1.401 Issue Management

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget. The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Program Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

1.402 Risk Management

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the Contract. Risk management generally involves (1) identification of the risk, (2) assigning a level of priority based on the probability of occurrence and impact to the project, (3) definition of mitigation strategies, and (4) monitoring of risk and mitigation strategy.

The Contractor's proposal must define risks identified as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to the State.

The Contractor must create a risk management plan. A risk management plan format will be submitted to the State for approval within twenty (20) business days after the effective date of the Contract. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon. The risk management plan will be developed in accordance with the State's PMM methodology and the PMBOK® (Project Management Institute).

1.403 Change Management

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator 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 Office of Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.

The Contractor must employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

1.5 Acceptance

1.501 Criteria

The following criteria will be used by the State to determine Acceptance of the services and/or deliverables provided under this SOW.

Milestone Deliverables - Milestone deliverables will be accepted as described in the table in 1.104.

Software -Testing must be sufficiently detailed to demonstrate the system's compliance with the requirements of the RFP. At a minimum, the testing will confirm the following:

- Functional - the capabilities of the system with respect to the functions and features described in the RFP.
- Performance - the ability of the system to perform the workload throughput requirements. All problems should be completed satisfactorily within the allotted time frame.

Service Deliverables - Services include, but are not limited to, maintenance, training and support. The following criteria apply to service deliverables:

- The services will be accepted in accordance with the requirements of this contract.
- MSHDA and MDIT staffs are properly trained and supplied documentation to support and use the software in accordance with the requirements of this contract and the accepted Contractor's proposal.
- The Contractor has the tools and connectivity installed, in compliance with MDIT standards, to properly support and monitor the system.

1.502 Final Acceptance

Final acceptance is expressly conditioned upon completion of delivery and installation of software, completion of all tasks in the project plan as approved, delivery of services, and the certification by the State that the system meets the defined requirements.

1.6 Compensation and Payment

1.601 Compensation And Payment

The Contractor must identify all information related, directly or indirectly, to the Contractor's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.

The Contractor shall provide a breakdown of all proposal costs along with a brief narrative explaining each cost. These costs are found in Appendix G.

Payment

The Contractor will submit properly itemized invoices to Dean R Feldpausch – MSHDA Project Manager at 735 E Michigan Ave. Lansing, Mi. 48912. Invoices shall provide information, and itemize, as applicable:

- Contract number;
- Purchase Order number;
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/equipment, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;

- Price for each item, or Contractor's list Price for each item and applicable discounts;
- Maintenance charges;
- Net invoice Price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice Price; and
- Payment terms including any available prompt payment discount.
- If fixed price, attach fixed price quote for that job.
- If time and materials, attach Contractor's time sheet to reflect days and times worked.

The State shall pay maintenance and support charges on a quarterly basis, in the beginning of the quarter. The State will not pay for maintenance on modules the State is not using. The State will only pay maintenance on modules that are running in production assuming there is no delay to getting modules into production due to the State's responsibilities.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

1.7 Additional Terms, Conditionsand Qualifications Specific to this SOW

1. CGI IPBS is licensed for up to 20 users. Additional users available at $2,000 per seat.
2. Prolink licensed for up to 50 users. Additional users available at $1,900 per seat.
3. MSHDA will provide most of the data extracted in a format to import.
4. MSHDA will be responsible for ensuring the accuracy of its data.
5. Pricing is built upon Vendor Hosting.
6. MSHDA will be trained on how to create many of their own reports and will be maintaining that responsibility moving forward.
7. MSHDA will make its domain experts and knowledge leaders available during the implementation to ensure that we can make timely decisions together.
8. The Contractor will provide a support technician onsite for the duration of the contract engagement at no cost to MSHDA.
9. These costs are locked for the first three years of this contract engagement.
10. After the first three years, these costs can be adjusted annually with two months notice from the vendor. Costs cannot be increased by more than 3.5% annually.
11. MSHDA will prioritize future customizations with Emphasys input. Customizations will be requested in writing by MSHDA, with authorization signatures from appropriate MSHDA Division Directors and the MSHDA Project Manager. Emphasys will spec and quote the customization, and respond in writing. MSHDA will authorize the customization upon acceptance of the specification and quotation, and a work schedule and timeline for completion will be jointly determined. MSHDA will be invoiced for the customization after; the code has been delivered to the test environment, testing by MSHDA associates has been completed, signoff by authorized MSHDA Division Director and MSHDA Project Manager has been received, and the code has been moved to the production environment for production use. In the event that MSHDA is unable to meet its obligation to test and move the customization to the production environment according to the timeline, the vendor will invoice and MSHDA will make payment according to the customization timeline. In the event that Emphasys is unable to meet its obligation to deliver the customization code to the Test System according to the timeline, the timeline for completion may be revised by MSHDA. If the customization does not perform as requested by MSHDA when delivered to the Test System, the timeline for completion may be revised by MSHDA.

Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

(a) "Days" means calendar days unless otherwise specified.

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

(c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide The Contractor with additional consideration. "Additional Service" does not include New Work.

(d) "Amendment Labor Rates" means the schedule of fully loaded hourly labor rates attached as **Article 1, Attachment C**.

(e) "Audit Period" has the meaning given in **Section 2.111**.

(f) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

(g) "Incident" means any interruption in Services.

(h) "Business Critical" means any function identified in any Statement of Work as Business Critical.

(i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work

(j) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B,** as Key Personnel.

(k) "New Work" means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide The Contractor with additional consideration. "New Work" does not include Additional Service.

(l) "Services" means any function performed for the benefit of the State.

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

(n) "Subcontractor" means a company Contractor delegates performance of a portion of the Services to, but does not include independent Contractors engaged by Contractor solely in a staff augmentation role.

(o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

(a) The parties agree that the Services/Deliverables to be rendered by the 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. The 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). The 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 the 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 the 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 the Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

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

2.014 Issuing Office

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

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

2.015 Contract Compliance Inspector

Upon receipt at Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Purchasing Operations**. The Contract Compliance Inspector for this Contract is:

Sara Williams
Department of Information Technology
7285 Parsons Dr. 1SC
Lansing, MI 48913
E-mail: Willaimss11@michigan.go
517-636-0499

2.016 Project Manager

The following individual will oversee the project:

Dean Feldpausch
Michigan State Housing Authority
735 E. Michigan
Lansing, MI 48912
Feldpauschd3@michigan.gov
Phone: 517-373-9792
Fax: 517-335-0482

2.020 Contract Objectives/Scope/Background

2.021 Background

Please refer to Article 1 – Statement of Work, Section 1.002

2.022 Purpose

Please refer to Article 1 – Statement of Work, Section 1.001

2.23 Objectives and Scope

Please refer to Article 1 – Statement of Work, Section 1.101

2.024 Interpretation

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

2.025 Form, Function and Utility

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

2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

This Contract is for a period of three (3) years commencing on the date that the last signature required to make the Contract enforceable is obtained. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to three (3) additional two (2) 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 the Contractor to the performance of Services under this Contract shall be employees of the 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. The 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 the Contractor for this Contract only; however, the State understands that the relationship between the 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, the 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) The 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 the Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

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

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

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least thirty (30) days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, the Contractor shall pay the amount of $800.00 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing shall not exceed $50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, the Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally,

the State's request shall be based on legitimate, good faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by the Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) The Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in the 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, the 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 the 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 the 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 the Contractor, the 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, the 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, the Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by the Contractor to work on the Contract will perform their duties either primarily at the Contractor's offices and facilities, subcontractor'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

The 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 the 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) The Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider the 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) The 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 the 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 the Contractor for the performance of the Services, the Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to the Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that the Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although the 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 the Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if the Contractor had not subcontracted such performance. The Contractor shall make all payments to Subcontractors or suppliers of the Contractor. Except as otherwise agreed in writing by the State and the Contractor, the State will not be obligated to direct payments for the Services other than to the Contractor. The State's written approval of any Subcontractor engaged by the Contractor to perform any obligation under this Contract shall not relieve the Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, the 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, 2.273, 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

The 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

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

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

2.053 Adherence to Portal Technology Tools

The State has adopted the following tools for its Portal Technology development efforts:

- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, the Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

The Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

2.054 Acceptable Use Policy

To the extent that the Contractor has access to the State computer system, the Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate the Contractor's access to the State system if a violation occurs.

2.060 Deliverables

2.061 Ordering

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

2.062 Software

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

2.063 Hardware

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

2.064 Equipment to be New and Prohibited Products

(a) Equipment to be New

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

(b) Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.106**.

2.070 Performance

2.071 Performance, In General

The State engages the 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) The 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)**, the 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 the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations in accordance with specified Contract time periods, the 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. The 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

The parties acknowledge that the failure of the Contractor to meet it's contractual and project obligations 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 such delay. Therefore, the Contractor and the State agree that in the case of any such failure in respect of which the State does not elect to exercise its rights under **Section 2.191**, the State may assess liquidated damages against the Contractor as specified in this Section. If the Contractor fails to provide the deliverables, as such deliverables are scheduled to be delivered in the final agreed Project Plan defined in section 1.104, then the State shall be entitled to collect liquidated damages at the rate of $100.00 per day for each day such failure continues, up to a maximum of $50,000.00. Prior to collecting any liquidated damages under this contract, the State shall first provide the Contractor with written notice of its intent to do so and shall allow the Contractor a period of no less than 30 days to remedy the perceived failure, and if such failure is cured no liquidated damages shall be due or be collected. The Contractor shall not be required to pay any liquidated damages under this Contract in the event that its failure to meet any delivery dates in the Project Plan is caused by the acts or omissions of the State, its contractors, or other causes beyond the reasonable control of the Contractor.

2.074 Bankruptcy

If the Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against the Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and the Contractor and/or its affiliates are unable to provide reasonable assurances that the 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. The 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 the Contractor's obligations hereunder, and any work which the Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence

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

2.076 Service Level Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:

(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,

(ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.

(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by the 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 the 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 the Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different Contractor for the chronic location(s) with the Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. The Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery of Deliverables

Article 1, Attachment D contains a list of the Deliverables to be prepared and delivered by the Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable") or a Custom Software Deliverable. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of this Contract.

Prior to delivering any Deliverable to the State, the Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, the Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality

assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

In discharging its obligations under this Section, the Contractor shall be at all times (except where the parties agree otherwise in writing) in compliance with Level 3 of the Software Engineering Institute's Capability Maturity Model for Software ("CMM Level 3") or its equivalent.

2.082 Contractor System Testing

Contractor will be responsible for System Testing each Custom Software Deliverable in the Contractor's development environment prior to turning over the Custom Software Deliverable to the State for User Acceptance Testing and approval. The Contractor's System Testing shall include the following, at a minimum, plus any other testing required by CMM Level 3 or the Contractor's system development methodology:

The Contractor will be responsible for performing Unit Testing and incremental Integration Testing of the components of each Custom Software Deliverable.

The Contractor's System Testing will also include Integration Testing of each Custom Software Deliverable to ensure proper inter-operation with all prior software Deliverables, interfaces and other components that are intended to inter-operate with such Custom Software Deliverable, and will include Regression Testing, volume and stress testing to ensure that the Custom Software Deliverables are able to meet the State's projected growth in the number and size of transactions to be processed by the Application and number of users, as such projections are set forth in the applicable Statement of Work.

The Contractor's System Testing will also include Business Function Testing and Technical Testing of each Application in a simulated production environment. Business Function Testing will include testing of full work streams that flow through the Application, as the Application will be incorporated within the State's computing environment. The State shall participate in and provide support for the Business Function Testing to the extent reasonably requested by the Contractor. Within ten (10) days before the commencement of Business Function Testing pursuant to this Section, the Contractor shall provide the State for State review and written approval Contractor's test plan for Business Function Testing.

Within five (5) Business Days following the completion of System Testing pursuant to **Section 2.080**, the Contractor shall provide to the State a testing matrix establishing that testing for each condition identified in the System Testing plans has been conducted and successfully concluded. To the extent that testing occurs on State premises, the State shall be entitled to observe or otherwise participate in testing under this Section as the State may elect.

2.083 Approval of Deliverables, In General

All Deliverables (Written Deliverables and Custom Software Deliverables) require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which, in the case of Custom Software Deliverables, will include the successful completion of State User Acceptance Testing, to be led by the State with the support and assistance of the Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables being reviewed. If the Contractor fails to provide a Deliverable to the State in a timely manner, the State will nevertheless use commercially reasonable efforts to complete its review or testing within the applicable State Review Period.

Before commencement of its review or testing of a Deliverable, the State may inspect the Deliverable to confirm that all components of the Deliverable (e.g., software, associated documentation, and other materials) have been delivered. If the State determines that the Deliverable is incomplete, the State may refuse delivery of the Deliverable without performing any further inspection or testing of the Deliverable. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable and the applicable certification by the Contractor in accordance with **Section 2.080**.

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

If, after three (3) opportunities (the original and two repeat efforts), the Contractor is unable to correct all material deficiencies noted in writing from the User Acceptance Testing, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep this Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, in which event the Contractor shall bear any excess expenditure incurred by the State in so doing beyond the contract price for such Deliverable and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses without the need to furnish proof in substantiation of such general expenses; or (iii) terminate this Contract for default, either in whole or in part upon thirty days written notice to the Contractor . Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

The State, at any time and in its own discretion, may halt the UAT or approval process if such process reveals deficiencies in or problems with a Deliverable in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the review or UAT process and, in that event, Contractor will correct the deficiencies in such Deliverable in accordance with the Contract, as the case may be.

Approval in writing of a Deliverable by the State shall be provisional; that is, such approval shall not preclude the State from later identifying deficiencies in, and declining to accept, a subsequent Deliverable based on or which incorporates or inter-operates with an approved Deliverable, to the extent that the results of subsequent review or testing indicate the existence of deficiencies in the subsequent Deliverable, or if the Application of which the subsequent Deliverable is a component otherwise fails to be accepted pursuant to **Section 2.080**.

2.084 Process for Approval of Written Deliverables

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

2.085 Process for Approval of Custom Software Deliverables

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.
Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to the Contractor's delivery of any Custom Software Deliverable to the State for approval, the Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. The Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in **Article 1, Attachment D**, the State Review Period for conducting UAT will be as indicated in **Article 1, Attachment D**. For any other Custom Software Deliverables not listed in **Article 1, Attachment D**, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied

by the certification required by **Section 2.080** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

The State's UAT will consist of executing test scripts from the proposed testing submitted by the Contractor, but may also include any additional testing deemed appropriate by the State. If the State determines during the UAT that the Custom Software Deliverable contains any deficiencies, the State will notify the Contractor of the deficiency by making an entry in an incident reporting system available to both the Contractor and the State. The Contractor will modify promptly the Custom Software Deliverable to correct the reported deficiencies, conduct appropriate System Testing (including, where applicable, Regression Testing) to confirm the proper correction of the deficiencies and re-deliver the corrected version to the State for re-testing in UAT. The Contractor will coordinate the re-delivery of corrected versions of Custom Software Deliverables with the State so as not to disrupt the State's UAT process. The State will promptly re-test the corrected version of the Software Deliverable after receiving it from the Contractor.

Within three (3) business days after the end of the State Review Period, the State will give the Contractor a written notice indicating the State's approval or rejection of the Custom Software Deliverable according to the criteria and process set out in this **Section 2.080**.

2.086 Final Acceptance

"Final Acceptance" shall be considered to occur when the Custom Software Deliverable to be delivered has been approved by the State and has been operating in production without any material deficiency for fourteen (14) consecutive days. If the State elects to defer putting a Custom Software Deliverable into live production for its own reasons, not based on concerns about outstanding material deficiencies in the Deliverable, the State shall nevertheless grant Final Acceptance of the Project.

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

(b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in the Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment** unless specifically identified in an applicable Statement of Work.

(c) Services/Deliverables Covered

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

(d) Labor Rates

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

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

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

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable

Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on The Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.

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

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

(c) Out-of-Pocket Expenses

The Contractor acknowledges that the out-of-pocket expenses that the 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 the Contractor's fixed price for each Statement of Work. Accordingly, the Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse the Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html 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 the 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. The Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by the 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. The Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback

The State shall have the right to hold back an amount equal to ten percent (10%) of the Price for Services and Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance. See Appendix G - Project Cost Table for a particulars.

2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). The 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) The 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. The 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 the Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, Subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, The Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

2.102 Problem and Contract Management Procedures

The Contract and the applicable Statements of Work will govern problem Management and Contract Management procedures.

2.103 Reports and Meetings

(a) Reports.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by the Contractor to the State. Such reports may include:

(i) separately address the Contractor's performance in each area of the Services;

(ii) for each area of the Services, assess the degree to which the Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;

(iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;

(iv) describe any circumstances that the Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;

(v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;

(vi) provide reports setting forth a comparison of actual hours spent by the Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.

(vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.

(viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.

(ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

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

2.104 System Changes

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

2.105 Reserved

2.106 Change Requests

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

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of The Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice 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 the 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 the Contractor (a "Change"), the State shall submit a written request for the Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

The 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, the 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. The 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 the Contractor provides a written proposal and should the 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 the 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 the 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 the Contractor to perform any activities that the Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities

are a Change prior to commencing the performance of the requested activities. If the 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 the Contractor, and the Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If the Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, the 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

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

2.110 Records and Inspections

2.111a Records and Inspections

(a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter the 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 ten (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. The Contractor must provide all reasonable facilities and assistance for the State's representatives.

(b) Examination of Records. The Contractor agrees that the State, including its duly authorized representatives, until the expiration of three (3) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of the Contractor's books, records, documents and papers pertinent to establishing the 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 the 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 the Contractor, or any Subcontractor of the Contractor performing services in connection with the Contract.

(c) Retention of Records. The 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 the 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 thirty (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 (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the payment received and the correct payment amount is (i) greater than ten percent (10%) and (ii) greater than $25,000, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

(a) Equipment and Other Resources. To facilitate the Contractor's performance of the Services/Deliverables, the State shall provide to the Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

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

(c) Return. The Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(c) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by the Contractor. However, the Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided the Contractor provides the State with reasonable written notice of such nonperformance and the Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for the Contractor's performance or the Contractor's cost of performance, the Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

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

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies

before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved

2.150 Confidentiality

2.151 Freedom of Information

All information in any proposal submitted to the State by the 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

The 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 the Contractor shall mean all non-public proprietary information of the 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 the 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 the 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 the 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) the 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 the 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 the 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, the 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. The Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. The Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights

2.161 License

The Contractor and the State agree to the terms and conditions as stated in
Appendix I, Section 1. LICENSED SOFTWARE and Section 2. PROPRIETARY INFORMATION & NON-DISCLOSURE
Appendix J, Section 6. PROPRIETARY RIGHTS
Appendix K, Section 1 LICENSE

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademark, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract. The State acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code.

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

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

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

2.162 Source Code Escrow

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

(i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;

(ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or

(iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

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

(c) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, the Contractor shall, as soon as is commercially reasonable and in no event less than once every six (6) months deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

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

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

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

(i) The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;

(ii) The Contractor has wound up or liquidated its business voluntarily or otherwise and the State has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;

(iii) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

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

(i) The State shall comply with all procedures in the Escrow Contract;

(ii) The State shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with this Contract;

(iii) If the release is a temporary one, then the State shall promptly return all released materials to the Contractor when the circumstances leading to the release are no longer in effect.

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

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

2.163 Rights in Data

(a) The State will be and remain the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives pursuant to the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor, nor will any employee of the Contractor other than those on a strictly need to know basis have access to the State's data. The Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor 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. The Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

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

2.164 Ownership of Materials

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

2.165 Standard Software

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

2.166 Pre-existing Materials for Custom Software Deliverables

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

2.167 General Skills

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

2.170 Warranties And Representations

2.171 Warranties and Representations

The Contractor represents and warrants:

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

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by the Contractor or developed by the Contractor under this Contract, and the Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by the Contractor to the State under neither 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 the Contractor under the Contractor's name), then in addition to the Contractor's other responsibilities with respect to such items in this Contract, the 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 the 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 the 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. The Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Neither the 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. The Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the 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 the Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by the Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by the Contractor to any other bidder; and no attempt was made by the Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the 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 the 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 changes in the business, properties, financial condition, or results of operations of the Contractor.

(l) All written information furnished to the State by or behalf of the Contractor in connection with this Contract, including its bid, it 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. The Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that the Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties

(a) Performance Warranty

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

(b) No Surreptitious Code Warranty

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

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

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

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

(c) Calendar Warranty

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

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

(d) Third-party Software Warranty

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

2.173 Equipment Warranty

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

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

Within 2 business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

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

2.174 Physical Media Warranty

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

2.175 Standard Warranties

(a) Warranty of Merchantability

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

(b) Warranty of fitness for a particular purpose

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

(c) Warranty of title

The Contractor shall convey good title in those Deliverables, whose transfer is right and lawful. All Deliverables provided by the Contractor shall be delivered free from any security interest, lien, or encumbrance. Deliverables shall be delivered free of any rightful claim of any third person of ownership, interest, lien or encumbrance.

2.176 Consequences For Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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

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

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

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

The insurers selected by the Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.
See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

☑ 1. Commercial General Liability with the following minimum coverage:

$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit
$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL 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, the Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

☑ 4. Employers liability insurance with the following minimum limits:

$100,000 each accident
$100,000 each employee by disease
$500,000 aggregate disease

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

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

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

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by the Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by the Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of the Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, the 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, the Contractor may include any Subcontractors under the 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 the Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

The Contractor shall furnish to the Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of the Contractor under this Contract to any indemnified party or other persons. The Contractor shall be responsible for all deductibles with regard to such insurance. If the 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 the Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due the Contractor, or the Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from the 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 the operation thereof, become or in the 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 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 the Contractor of such claim in writing and take or assist the Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against the Contractor. No failure to notify the Contractor shall relieve the Contractor of its indemnification obligations except to the extent that the Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, the Contractor shall notify the State in writing whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and prior to the State receiving the Contractor's Notice of Election, the State shall be entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If the 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) the Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the 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 the Contractor given within ten (10) days after the State's receipt of the Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that the 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 the 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 the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for Damages, or any other claims, costs or losses to the State shall be limited to two times the value of the software license fees paid by the State under this Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or

damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.
In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

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

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

2.203 Disaster Recovery

The 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, the 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 the Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to the 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, the Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

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

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

2.212 Termination for Convenience

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

The State agrees to pay the following Early Termination Charges. These charges shall not apply if the State cancels the Contract for the Contractor's material breach or the State's non-appropriation pursuant to this Contract.

Year	Termination Charge
Year 1	$ 270,000.00
Year 2	$ 180,000.00
Year 3	$ 90,000.00

2.213 Non-Appropriation

(a) The 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 the Contractor at least thirty (30) days advance written notice of

termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay the Contractor for the agreed-to level of the Services or production of Deliverables to be provided by the Contractor are not appropriated or otherwise made available, the State may, upon thirty (30) days written notice to the 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 the Contractor pursuant to this Section, the State shall pay the 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 the 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 the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the 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 the 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, the 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 the Contractor's possession, (c) return all materials and property provided directly or indirectly to the 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, the 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 the 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 the 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, the Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed ninety (90) days. These efforts shall include, but are not limited to, the following:

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

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

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, The Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and the 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 the 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 the 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 the Contractor (such time period not to be less than thirty (30) days), then the 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 the Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106.**

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

Any claim, counterclaim, or dispute between the State and the 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 the Contractor under the Contract, or the time for the Contractor's performance, the Contractor shall submit a letter executed by the 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 the Contractor or the time for the Contractor's performance for which the Contractor believes the State is liable and covers all costs of every type to which the 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 the 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 the 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 the Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

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

2.253 Injunctive Relief

The only circumstance in which disputes between the State and the 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, the 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. The Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and any breach of this provision may be regarded as a material breach of the Contract.

2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq*., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

(a) Disclosure. The 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 the Contractor (or, to the extent the 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 the Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against the Contractor or, to the extent the Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from the 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 the Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or

(ii) whether the 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 the Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(A) The 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) The 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) The Contractor shall make the following notifications in writing:

(1) Within thirty (30) days of the 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, the Contractor shall notify the Purchasing Operations.

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

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

2.272 Governing Law

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

2.273 Compliance with Laws

The 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, the 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. The Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.280 Environmental Provision

2.281 Environmental Provision

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

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and the Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site

and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

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

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of the Contractor and the 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) The 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, the 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 the Contractor is that of client and independent Contractor. No agent, employee, or servant of the 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. The 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.

Department of Management and Budget
Purchasing Operations
Attention: Dale N. Reif
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

with a copy to:

State of Michigan
Department of Information Technology
Attention: Sara Williams
7285 Parsons Dr. 1SC
Lansing, MI 48913

and another copy to:

Emphasys Software
Attention: Michael Byrne
8550 NW 33rd St. , Suite 200
Miami, FL 33122

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

2.297 Media Releases and Contract Distribution

Media Releases - Neither the 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 the 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.

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

2.298 Reformation and Severability

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

2.299 Consents and Approvals

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

2.300 No Waiver of Default

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

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for

any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

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

2.303 Permits

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage

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

The Contractor, its Subcontractors, their Subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

2.307 Call Center Disclosure

The 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

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

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

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

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

2.322 State Employee Purchases - Reserved

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms that may be required for some purchases paid via Federal funds. Lobbying Certifications are usually for agreements over $100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended Contractors.
http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html
http://www.archives.gov/federal_register/codification/executive_order/12549.html
http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf
http://www.epls.gov/epls/servlet/EPLSSearchMain/1