



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**  
 to  
 Contract Number **071B1300301**

<b>CONTRACTOR</b>	DATA RECOGNITION CORPORATION
	13490 Bass Lake Road
	Maple Grove, MN 55311
	Susan Engeleiter
	763-268-2102
	sengeleiter@datarecognitioncorp.com
	*****0970

<b>STATE</b>	<b>Program Manager</b>	Tom Korkoske	MDE
		517-373-8629	
		korkosket@michigan.gov	
	<b>Contract Administrator</b>	Jillian Yeates	DTMB
		(517) 284-7019	
		yeatesj@michigan.gov	

CONTRACT SUMMARY				
TEST DEVELOPMENT ADMINISTRATION MDE				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
July 8, 2011	July 7, 2016	2 - 1 Year	July 7, 2018	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		n/a		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
n/a				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	2 years and 23 Days	July 30, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$39,588,478.00	\$10,000,000.00	\$49,588,478.00		
DESCRIPTION				
Effective February 28, 2018, this contract is extended 2 years and 23 days and is increased by \$10,000,000.00. The revised contract expiration date is July 30, 2020.				
Please note the Contract Administrator has been changed to Jillian Yeates, per section 2.021 and the Program Manager has been changed to Tom Korkoske, per section 2.022.				
All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on February 27, 2018.				

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. 1**  
 to  
**CONTRACT NO. 071B1300301**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Data Recognition Corporation	Susan Engeleiter	Sengeleiter@DataRecognitionCorp.com
13490 Bass Lake Road	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Maple Grove MN, 55311	763-268-2102	*****0970

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDE	Douglas Collier	(517) 241-4431	Collierd1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Test Development Administration for MDE.			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 8, 2011	July 7, 2016	2 - 1 Year	July 7, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	Two years	<input type="checkbox"/>		July 7, 2018
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$27,067,755.00		\$12,520,723.00	\$39,588,478.00	

**DESCRIPTION:** Effective March 1, 2016 the two (one year) options available on the Contract is hereby exercised with the addition of \$12,520,723.00. The revised Contract expiration date is July 7, 2018.

All other terms, conditions, specifications, and pricing remain the same. Per Data Recognition Corporation and MDE agreement, DTMB approval and State Administrative Board approval on March 1, 2016.

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

**CONTRACT NO. 071B1300301**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR  <b>Data Recognition Corp</b> <b>13490 Bass Lake Road</b> <b>Maple Grove, MN 55311</b>		TELEPHONE Susan Engeleiter <a href="mailto:SEngeleiter@DataRecognitionCorp.com">SEngeleiter@DataRecognitionCorp.com</a> <b>(763) 268-2102</b>
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1218 <b>Brandon Samuel</b>
Contract Compliance Inspector: Douglas S. Collier (517) 241-4431		
CONTRACT PERIOD: 5 yrs. + two-one year option From: <b>7-08-11</b> To: <b>7-07-16</b>		
TERMS  <div style="text-align: center;"><b>N/A</b></div>	SHIPMENT  <div style="text-align: center;"><b>N/A</b></div>	
F.O.B.  <div style="text-align: center;"><b>N/A</b></div>	SHIPPED FROM  <div style="text-align: center;"><b>N/A</b></div>	
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;"><b>N/A</b></div>		
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #DC-RO200385, this Contract Agreement and the vendor's quote dated February 14, 2011. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b> <b>Estimated Contract Value: \$27,067,755.00</b>		

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. DC-RO200385. Orders for delivery will be issued directly by the Michigan Department of Education, Bureau of Assessment and Accountability 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:**

\_\_\_\_\_  
 Data Recognition Corp.  
 Firm Name

\_\_\_\_\_  
 Authorized Agent Signature  
 Susan S. Engeleiter  
 Authorized Agent

\_\_\_\_\_  
 Date

**FOR THE STATE:**

\_\_\_\_\_  
 Signature  
 Natalie Spaniolo / Acting Director

\_\_\_\_\_  
 Name/Title  
 DTMB-Purchasing Operations

\_\_\_\_\_  
 Division

\_\_\_\_\_  
 Date

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Attachment A, Pricing (attached as separate document)

## DEFINITIONS

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

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

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

**Bidder(s)** are those companies that submit a proposal in response to this Statement of Work.

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

**Blanket Purchase Order** is an alternate term for contract and is used in the Plan Sponsors' computer system.

**CD-ROM** means Compact Disk Read-Only Memory. This is a data storage device.

**CCI** means Contract Compliance Inspector.

**Days** mean, calendar days unless otherwise specified.

**Deleted – N/A** means that section is not applicable or included in this Statement of Work. This is used as a placeholder to maintain consistent numbering.

**Deliverable** means physical goods and/or services required or identified in a Statement of Work.

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

**DVD** means Digital Video Disk, or Digital Versatile Disk, which is an optical disk storage device.

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

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

**Incident** means any interruption in any function performed for the benefit of a Plan Sponsor.

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

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

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

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

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

**Recycling** means the series of activities by which materials that are no longer useful to the generator are

collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

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

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

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

**SLA** means Service Level Agreement.

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

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

**Subcontractor** means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

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

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

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

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

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



## Article 1 – Statement of Work

### 1.010 Project Identification

#### 1.011 Project Request

This Contract for the development, quality assurance, revision, and stakeholder review and recommendation regarding disposition of assessment items and contexts (e.g. passages, charts, and graphics developed as context for answering test questions). This Contract is for all subjects and tests included in the State of Michigan's K-12 statewide assessments. The assessment programs include the following:

- Michigan Educational Assessment Program (MEAP)
- Michigan Merit Examination (MME) custom developed components
- MI-Access (Michigan's alternate assessments based on alternate achievement standards for students with significant cognitive disabilities), including:
  - MI-Access Functional Independence (FI, for students with mild cognitive impairment)
  - MI-Access Supported Independence (SI, for students with moderate cognitive impairment)
  - MI-Access Participation (P for students with severe cognitive impairment)
- MEAP-Access (Michigan alternate assessments based on modified achievement standards for students with disabilities in elementary and intermediate schools)
- English Language Proficiency Assessment (ELPA)
- Secondary Credit Assessments (SCA)
- Interim Benchmark Assessments (IBA) / Formative Assessments activities

Assessments developed by a consortium of states to which Michigan belongs may take the place of existing assessments in any content area and grade developed by the consortium. It is currently anticipated that MME and MEAP, mathematics, reading, and writing will be replaced by a consortium assessment with the first statewide implementation in the 2014-15 school year. It is also anticipated that all MI-Access assessments, the ELPA assessment, and/or portions of the interim/benchmark assessments may be replaced by a consortium assessment within the term of this contract. Other assessments currently not anticipated to be replaced may also be replaced by consortium developed assessments. If current assessments are replaced by consortium assessments all functions associated with item and test development for those assessments may at the State's option, cease to be a part of this contract.

The activities of this contract will benefit the following;

1. Development, quality assurance, and revision of items and contexts
2. Stakeholder review and recommendations for disposition of items and contexts

Contractors shall provide a comprehensive plan and a set of standards and protocols to assure that the vendor being paid for item development only upon acceptance of the items does not compromise the stakeholder review process. The plan, standards, and protocols must allow for the same staff to be bid for both sets of activities, while at the same time ensuring unbiased review of items. The BAA's IBS will assist in providing a type of firewall between the activities, and BAA Development Staff will be highly involved in the review process to assist the Contractor to ensure the review processes are bias-free.

## 1.012 Background

The Michigan Department of Education (MDE) Bureau of Assessment & Accountability (BAA) is responsible for development and administration of multiple K-12 student assessment programs, as well as the high-stakes use of results of those programs for accountability purposes. Therefore, the work performed by the Contractor(s) shall be of the highest quality, and shall conform to the most recent *Standards for Educational and Psychological Testing* as published by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. Descriptions and other helpful information for each of the BAA's programs can be found on the website [www.michigan.gov/BAA](http://www.michigan.gov/BAA).

In summary, the BAA has seven (7) assessment programs that it develops. The MEAP is the State's criterion-referenced assessment taken by most of Michigan's students in grades 3 through 9 to measure their proficiency with the State's content standards and meeting its achievement standards. The MME is the State's high school criterion-referenced assessment with nationally recognized college-entrance, work skills readiness, and Michigan-developed components which is given to students in the 11<sup>th</sup> grade. The MEAP-Access is similar to MEAP in that it measures the same content as MEAP, but with student proficiency measured against modified achievement standards. The MI-Access has three programs (Functional Independence, Supported Independence, and Participation). These are all alternate assessments based on alternate achievement standards to the MEAP and MME for students with significant (mild to severe) cognitive disabilities. The ELPA is for students who are learning English as a second language and are not yet proficient. The SCA are currently end-of-course assessments for high school students to help teachers measure students proficiency in specific content areas. It is anticipated that Michigan will be developing an additional assessment program, comprised of Interim Benchmark Assessments based on the Common Core State Standards (CCSS) in English language arts and mathematics, with the possibility of expansion to other core (e.g., science, social studies) and non-core (e.g., art, P.E., computer science.) subjects.

### Interim Benchmark Assessment:

Michigan must expand its current assessment system in order to meet education reform legislation recently passed, that is also expected to become key components of a reauthorized Elementary and Secondary Education (ESEA) Act. In support of providing measures that will give local districts options to include student achievement data into teacher and principal evaluations (as locally bargained) the State will develop and implement a limited number of Interim Benchmark Assessments (IBAs) in English language arts and mathematics as funding and workload allow. Development of IBAs in English language arts and mathematics will take place first in grades K-2, but may be expanded to K-12, and may be expanded to include other core (e.g., science and social studies) and non-core (e.g., art, P.E., computer science, etc.) subjects as funding and workload allow.

In support of Michigan's adoption of the Common Core State Standards (CCSS) in June 2010, all IBAs will (initially) be based on the CCSS rather than the state Grade-Level Content Expectations (GLCEs) or High School Content Expectations (HSCEs). If expansion beyond English language arts and mathematics is feasible, the development will be done against whatever content standards exist for content areas to which development is expanded.

Additionally, the SMARTER Balanced Assessment Consortium (SBAC), of which Michigan is a governing state, will be developing items, and eventually assessments, in support of IBA. Michigan's IBA efforts will be done in concert with those of the SBAC. It is expected that the SBAC will provide operational IBA in some grades (most likely 3-8 and 11) by the 2014-15 school year that may replace any Michigan-developed instruments of this type in English language arts and mathematics. It is

anticipated that the Contractor will only be involved in the item development and review of the items for grade levels and content areas not covered by the SBAC.

BAA and the Contractor are also responsible for ensuring compliance of all activities carried out under the contract with all applicable legislation, regulation, and policies surrounding assessment(s). These include the following:

- The federal No Child Left Behind (NCLB) Act of 2001 (a.k.a. Elementary and Secondary Education Act), or successor legislation
- The federal Individuals with Disabilities Education Act (IDEA), or successor legislation
- The federal Americans with Disabilities Act (ADA), or successor legislation
- The federal American Recovery and Reinvestment Act, its various components, or successor legislation
- The federal guidelines and regulations regarding NCLB, IDEA, ADA, or ARRA, including both specifications for assessment programs as well as specifications for accountability use of results from those assessment programs
- The Michigan State School Aid Act, or successor legislation
- The Michigan School Code, or successor legislation
- The Michigan Assessment of Remedial Assistance Programs, or successor legislation
- The Michigan State Board of Education policy on learning expectations for Michigan students, or successor policies
- The Michigan State Board of Education policy to include all students in the Michigan Educational Assessment System, or successor policies
- The Michigan State Board of Education policy regarding testing of Limited English Proficiency students (LEP), or successor policies

All of the assessment programs developed and administered by BAA are mandated by one or more of the laws and policies listed above. During the term of this contract, new legislation and/or funding levels may determine that a current program be modified and/or other programs added. The Contractor shall be flexible to accommodate such changes.

Each of the assessment contexts and items to be developed and reviewed as part of this contract shall be linked to one or more strands and/or expectations listed in the Michigan Curriculum Framework or to the CCSS or to any new content standards against which development should occur based on adoption by the State Board of Education. Refer to <http://www.michigan.gov/mde/0,1607,7-140-28753---,00.html> for a complete current copy of the Michigan Curriculum Framework. It is expected that the contractor be fully knowledgeable in the Michigan Curriculum Framework, including Michigan's Grade-Level Content Expectations (GLCEs) and Michigan's High School Content Expectations (HSCEs), as well as the CCSS, and any content standards adopted by the State Board of Education during the term of this contract and against which items should be developed.

The SCAs pilots have historically consisted of 10 forms with approximately 25 MC items and, up to 4 CR items to be scored. These counts may change however, based on test blueprint from development cycle to development cycle.

The Contractor will be responsible only for custom items developed for Michigan assessments. The MME uses items from ACT products, including the ACT test (ACT) and WorkKeys tests (WK) which are proprietary to ACT. The contractor may be required to perform modifications to existing MEAP items and custom develop items for use in MEAP-Access. These modifications or developments will be facilitated in a similar manner as new items.

The current estimates of total number of items that need to be written each year to field test properly and keep current operational item inventory at proper levels. These counts include overages for potential item loss.

Michigan uses items on its assessments with the following functions.

- Core = items that appear on every form in a grade level and count toward student scores.
- Matrix = items that appear on one or more (but not all forms) in a grade level, and count toward student scores.
- Field Test (FT) = items that appear on one or more (but not all forms) in a grade level, in field test slots (and do not count toward student scores).

These assessments will likely be replaced with common assessments developed by a consortium of states to measure common standards derived from the common core initiative. Contractor should plan for possible loss of these subjects. Other subjects may or may not follow.

ELA = English language arts

The ELPA is developed in grade spans (K, 1-2, 3-5, 6-8, and 9-12) with all students in each span taking the same test.

Today SCAs are developed by BAA with assistance from Contractors, and are then made available for use by districts at their own expense. They are not “full-service” programs. IBAs are also developed by BAA with assistance from Contractors. Note that SCAs will also likely become available as IBAs at some point in the future as a full-service program.

## **1.020 Scope of Work and Deliverables**

### **1.021 In Scope**

**The scope of work for *Development* includes the following:**

- Assigning and maintaining staff with expert knowledge of the Michigan Curriculum Framework, Michigan's Grade-Level Content Expectations, High School Content Expectations, Extended Content Expectations for alternate assessments based on alternate achievement standards (e.g., MI-Access), Michigan's English Language Proficiency Standards, the Common Core of State Standards (CCSS), alignment methodologies, cognitive complexity taxonomies (e.g. Webb Depth of Knowledge, Bloom's taxonomy), and large-scale K-12 assessments
- Developing expert-level staff knowledge of any new content standards and/or cognitive complexity taxonomies adopted by the State Board of Education or BAA and against which items are to be developed
- Providing edits to items as appropriate on programs without existing contracts for item development in cooperation with BAA staff as necessary. Edits will only occur at specified points in the IBS process flow.
- Developing high-quality training methods and materials for item writers of the various programs in cooperation with BAA staff
- Developing high-quality training methods and materials for context authors in cooperation with BAA staff
- Developing consistent high-quality training methods and materials across the various programs
- Developing high-performing item writers to serve as coaches, leaders, and mentors of other item writers
- Using IBS to periodically review item pools in order to identify item and context development needs for each program that will:
  - occur at least before each item writing session and after making any revisions to items requested during committee review.
- Using periodic review results to assign targeted context and item development tasks to writers
- Developing a schedule of item development activities that flattens workloads throughout the year for Contractor and BAA staff while ensuring that key milestones are met to ensure on-time delivery of test booklets to administration vendors for printing and distribution.
- Coordinating all logistics of item writing sessions, including, but not necessarily limited to, the following:
  - Recruiting (with BAA assistance and approval) item writers to participate in writing sessions (All items at this time are written by Michigan educators; it is intended that this practice will continue)
  - Screening candidates (with BAA assistance and approval) using an agreed upon application process, which may include a performance component, such as writing sample items
  - Refreshing the pool of item writers (with BAA assistance and approval) as needed (but at least annually) to ensure high-quality item development for all programs
  - Obtaining and paying for space with sufficiently updated Internet-connected computers to accommodate all item writers, the BAA staff, and Contractor staff such that there is one computer per person; and to accommodate the requirements of the BAA IBS

- Making and paying for lodging arrangements for all item writing team (IWT) members
- Making and paying for meal arrangements and snacks for item writing sessions
- Providing high-quality training for IWT members, consistent across all programs.
- Assigning tasks to IWT members (with BAA assistance and approval)
- Paying IWT members their base daily compensation for the item writing sessions
- Paying IWT members their per-item compensation for items accepted by BAA
- Paying substitute teacher costs (if needed) for IWT members
- Paying IWT member the state rate for appropriate travel and meal costs not directly covered above
- Reviewing IWT member submissions and providing feedback
- Providing, at a minimum, an annual evaluation report of each item writer's performance and participation levels to BAA
- Coordination of all logistics for context development, including, but not limited to, the following:
  - Commissioned passages
    - Recruiting (with BAA approval) respected Michigan authors to write passages for use on BAA assessments; if sufficient Michigan authors are unavailable, the pool may be expanded to the Great Lakes region upon BAA approval.
    - Entering into contracts with context authors for the commissioned development of passages, with full BAA ownership.
    - Providing high-quality online training for context authors to facilitate off-site development of passages.
    - Fulfilling contractual obligations with context authors.
  - Permissioned passages
    - Identifying (with BAA assistance and approval) candidate passages for use on BAA assessments.
    - Submitting the candidate passages to the Review process for disposition.
    - Negotiating on behalf of BAA (with BAA approval) rights to use any passages accepted during the Review process. Any associated fees shall be approved by BAA's Contract Compliance Inspector prior to final commitment and billed to BAA at actual cost. Negotiation shall include optional pricing for online release of the passages to be accepted and paid at BAA discretion.
    - Making sure vendor keeps detailed records of negotiated permissions that include limits of use, permission expiration, and any unique requirements
  - All other Development obligations listed in the Statement of Work regarding the development of contexts.
- Making revisions in the IBS to items and contexts based on committee review recommendations as approved by BAA.
- Adding non-statistical metadata and attributes to items in the IBS at appropriate times in the workflow
- Translating specifically selected contexts and items into Spanish and Arabic (accommodated form only)
- Fulfilling all other Development obligations listed in the Statement of Work.
- Using State technical systems including, but not limited to, the IBS as necessary to fulfill Contractor obligations

**The scope of work for *Review* includes the following:**

- Assigning and maintaining staff with expert knowledge of the Michigan Curriculum Framework, Michigan's Grade-Level Content Expectations, High School Content Expectations, Extended Content Expectations for alternate assessments based on alternate achievement standards (e.g., MI-Access), Michigan's English Language Proficiency Standards, the Common Core of State Standards (CCSS), alignment methodologies, cognitive complexity taxonomies (e.g. Webb Depth of Knowledge, Bloom's taxonomy), and large-scale K-12 assessments
- Developing staff with expert knowledge of any new content standards and/or cognitive complexity taxonomies adopted by the State Board of Education or BAA and against which items are to be developed.
- Developing high-quality training methods and materials for item and context reviewers of the various programs in cooperation with BAA staff
- Developing consistent training methods and materials across the various programs
- Development of high-performing item reviewers to serve as coaches, leaders, and mentors to other item reviewers
- Conducting all item and context review sessions, including Bias/Sensitivity Committees (BSC) and Content Advisory Committees (CAC)
- Coordinating all logistics of item and context review sessions, including, but not necessarily limited to, the following:
  - Recruiting (with BAA assistance and approval) BSC and CAC members to participate in review sessions
  - Refreshing the pool of BSC and CAC members (with BAA assistance and approval) as needed (but at least annually) to assure high quality item review for all programs
  - Providing an annual performance and participation report for each BSC and CAC member
  - Obtaining and paying for space with sufficiently updated internet-connected computers to accommodate all item reviewers (one computer per reviewer), BAA staff, and Contractor staff; and to accommodate the requirements of the BAA IBS
  - Making and paying for lodging arrangements for all BSC and CAC members
  - Making and paying for meal arrangements and snacks for item review sessions
  - Providing high-quality training for BSC and CAC members
  - Paying BSC and CAC members their base daily compensation for the item or context review sessions
  - Paying substitute teacher costs (if needed) for BSC and CAC members
  - Paying BSC and CAC members State rate for appropriate travel and meal costs not directly covered above
  - Providing leadership and working in collaboration with BAA Development Staff at the BSC and CAC meetings to capture in the IBS consensus comments and recommendations for each item and context reviewed
  - Remaining on-site for one additional day following review meetings to work directly with BAA Development Staff to consolidate and finalize all comments
- Coordinating all logistics of Field Review sessions, including, but not necessarily limited to, the following:
  - Maintaining a list of accepted participants
  - Obtaining and paying for space with sufficiently updated Internet-connected computers to accommodate a reasonable number of field reviewers and the requirements of the IBS
  - Providing brief, high-quality training for field reviewers
  - Providing leadership in the Field Review meetings to assist field reviewers in completing their tasks
  - Summarizing field reviewer comments and recommendations in collaboration with BAA Development Staff

- Remaining on-site for one additional day following review meetings to work directly with BAA Development Staff to consolidate and finalize all comments
- Producing reports based on results of item and context review meetings for BAA use
- Fulfilling all other Review Contractor obligations listed in the Statement of Work
- Use of State IT systems including, but not limited to, the IBS as necessary to fulfill Contractor obligations

As they are completed, all materials developed under the scope of this contract will become property of the Michigan Department of Education and be available in an online format.

### **1.022 Work and Deliverable**

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth below. The contractor agrees to meet or exceed all requirements as provided within their written response and as provided for with any clarifications noted on the questions and answers for this statement of work.

### **General Information**

In general, the Contractor(s) will assist the BAA in developing high-quality assessment items for its various K-12 assessment programs. These assessment items shall be developed through stringent development, review, and control processes to sustain the quality, integrity, and usefulness of the state assessments. This section addresses information related to all activities of this contract.

In both the development and the review activities, BAA is looking for teams supported by experts in the content areas being assessed (currently English language arts, mathematics, science, and social studies). The experts shall be knowledgeable and experienced in what students should know in each of the content areas and at each grade level of the current Michigan Curriculum Framework, including students with varying levels of physical and cognitive impairments, as well as English language proficiency for students who are learning English as a second language. These teams will be involved with the development, review, and revision of assessment items using the BAA's systems.

The primary tool for a majority of the work and deliverables related to this Contract (Statement of Work) is the State of Michigan's proprietary Item Banking System (IBS).

There are two general areas of deliverables for this contract. The first one is development, quality assurance, and revision of assessment items and contexts (*Development*). The other area is stakeholder review and recommendations for disposition of items and contexts (*Review*).

### **1.023 Development, Quality Assurance, and Revision**

The work and deliverables required for *Development* are segregated into two additional subsections and listed below.

#### **A. Context Development Process**

A context is defined as an auxiliary, help, guide, source, or document (beyond the stem of an item) which is necessary in order for the student to respond successfully to assessment items. Examples of a context include literary passages, illustrations, prompts, stimuli, charts, tables, directives, arrays, or any combination thereof. Contexts have also been referred to as scenarios. All items are associated to the context which 1) reference its information, 2) direct the student to interact with it, 3) base their stem or options on it, or 4) any combination thereof.

1. The Contractor will work with BAA to identify and schedule appropriate training of the Contractor's staff on how to use the IBS.



2. The Contractor will analyze the current inventory of contexts for all applicable assessment programs – including those from programs that are part of separate active contracts.
3. The Contractor will use the IBS to make any appropriate edits recommended from review committees (see section 1.024) and are not from one of the programs that are part of a separate active contract (i.e., existing MI-Access and ELPA development contracts).
4. The Contractor's experts and appropriate key personnel will meet with BAA's content specialists to identify an appropriate list of Context writers to recruit.
5. The Contractor's staff will be required to prepare and process all communications related to the recruiting of writers. BAA shall approve all mass communications (i.e. blast emails, press releases, etc.) related to this statement of work before they are sent.
6. The Contractor's experts and appropriate key personnel will consultation with BAA's content specialists will review current inventory of contexts and list of context requests to identify what type and quantity of contexts need to be developed for each program, content area and grade level/span.
7. The Contractor shall develop high-quality training methods and materials for context authors in cooperation with BAA staff.
  - a. The training methods and materials shall be consistent across the various programs.
8. The Contractor shall recruit authors that live in the state of Michigan to write contexts. Other authors may be considered with BAA approval, with preference for Great Lakes area authors.
  - a. Due to the expected workload related to English language arts, it is expected that at least five (5) context writers will be needed for that content area and for each applicable program that has context needs.
  - b. Actual numbers of context writers will differ for each year and program based on the annual review of the pool of available contexts. Vendor will work closely with BAA staff to examine the inventory of contexts for each program following each assessment cycle to jointly decide on the number of writers needed.
9. For commissioned contexts, the Contractor will establish contracts with each recruited context writer that will give complete ownership to BAA of all works submitted.
  - a. These contracts need to be established in advance of any writing assignments with clauses allowing for the immediate termination without additional compensation for poor performance and deliberate plagiarism.
  - b. These contracts shall define that no work will be accepted that currently is the subject of any restrictive licensing or royalty agreement.
  - c. These contracts shall state that the contexts the writer submits will be the property of the Michigan Department of Education and the writer is not entitled to a licensing or royalty compensation beyond any payment already offered for the creation of the commissioned context.
10. For permissioned or public domain contexts, the Contractor will use its own staff as context writers (in collaboration with BAA staff) to identify contexts currently under copyright or in the public domain.
11. Staff will train the recruited Context writers for submitting commissioned context using the IBS. The Contractor shall maintain an auditable tracking system for identifying who participated in the training (e.g., sign-in sheets).
12. The Contractor will make context writing assignments to the Context writers through the IBS and monitor progress of each assignment. Context writing assignments are pre-determined through the need for a context that will have several assessment items linked to it. Note that in the assignment, notes can be provided specifying certain characteristics of the contexts, including (for example) a set of content standards the context should facilitate measuring if possible.
13. The IBS has reports and interface screens to assist in monitoring the progress of context writers' assignments.

14. The Context writer's first step will be to submit a short description of commissioned contexts or a citation for permissioned or public domain contexts for approval.
15. After permissioned, or public domain contexts are entered in the IBS and submitted, the context is presented to the next Bias/Sensitivity Committee (BSC) and Content Advisory Committee (CAC) to get their opinions of the context. Based on the (consensus) committees' opinions BAA will make the official determination on whether the context should be used for assessment item development. If BAA determines the context is acceptable then the IBS will be coded as such and the Contractor shall work to obtain at least a five-year approval from the owner of the identified work which allows for BAA to reproduce it in the state assessments (with optional pricing for posting copies of the work on the Internet in a similar fashion to show how the context was presented in the assessment). Once the rights have been obtained then the Contractor will update the IBS with the terms of the permission and then the context will be ready for selection in the IBS for assessment item writing assignments.
16. After the description of a proposed commission context is entered into the IBS then BAA and the Contractor's context lead will review it for acceptance or revision. Any revisions should be done by the Context writer. Once the description is accepted, the Context writer will develop and enter the full context (except for any audio, video, or art work) into the IBS. The IBS will allow writers to save progress on their entries without submitting. Once the writer submits their work in the IBS then BAA and the Contractor's context lead will need to review the context to determine whether it needs additional revisions. When the context is accepted it will be presented to BSC and CAC. The BAA will review the (consensus) opinions of the committees and make determination for acceptance. After review it is put into the queue of the BAA Composition Group to put in any artwork and format. If accepted then the context will be coded in the IBS as ready for assessment item writing assignments.
  - a. The Development Contractor will be responsible for reviewing all commissioned context developed under the contract resulting from this Statement of work for:
    - i. plagiarism
    - ii. factual, historical, and scientific accuracy
    - iii. grammar appropriate to grade level and intended assessment population
    - iv. appropriate link to content expectations (strand, standard, and/or benchmark)
    - v. readability on a measurement scale agreed upon by the Contractor and BAA
17. Following every assessment cycle, statistical data from all items for that cycle are entered into the IBS by BAA. After the statistical data is entered the Contractor will work with BAA to review the performance of all contexts and items in order to determine their value for future assessments. Once a context is determined to no longer have any value then that context and all linked assessment items are coded as Retired and may be Released to the general public.
18. The operational and field-test contexts selected to be on the accommodated form of any assessments are adapted for any approved special accommodations. The currently approved accommodations for the selected accommodated form are Braille, enlarged-print, being read to (using reader scripts), audio recording, and videos following an English test booklet with accompanying audio in English, Spanish or Arabic. The Contractor will add any metadata or attributes necessary for preparing such accommodations into the IBS, such as Braille notes which are to be used by the Brailier.
19. When illustrations are determined to be necessary for commissioned contexts, the BAA Composition Group will determine the assignment, workflow, and review of those illustrations.
20. Evaluate writer performance: At least annually the Contractor shall evaluate the performance of each context writer. The Contractor shall work with BAA to develop an evaluation tool (external to the IBS). This could be an online tool. The evaluation will be used to determine the quality of each writer and will impact the extent and volume of future writing assignments.

## **B. Item Development Process**

Many of the steps in context development are the same in item development. But the IBS has separate system areas for these two development processes.

1. The Contractor will work with BAA to identify and schedule appropriate training of Contractor's staff about how to use the IBS.
2. Using the IBS, the contractor in collaboration with the BAA will review the current inventory of assessment items to determine the anticipated item development quantity for each program they are responsible for.
3. The Contractor will make any appropriate edits in the IBS to assessment items that 1) have not received Stakeholder Review approval (see section 1.024) and 2) are not from one of the programs that are part of a separate active contract. The contractor will apply edits based on consensus comments from review committees, and these edits will only occur at specified points in the IBS process flow.
4. The Contractor's experts and appropriate key personnel in consultation with BAA's content specialists will identify an appropriate list of the type and quantity of assessment Item writers to recruit.
5. During the first rounds of item development, all item writing will be done at in-person meetings with the Item Writing Teams (IWTs). Each team will meet for three (3) consecutive days. Part of the first day will include training and issuance of writing assignments through the IBS. The remaining time will be used for completing those assignments.
  - a. BAA plans to begin migrating to remote item writing for experienced writers in the following rounds. The success of moving to remote item writing will depend on secure technology and item writer performance. New item writers will need to participate in an in-person meeting, including training as described above.
6. The Contractor will locate, schedule, and pay for a meeting facility with computers which are sufficiently updated with internet access to meet the requirements of the IBS to hold the training and in-person writing sessions.
7. The Contractor's staff will be required to prepare and process all communications related to the recruiting of writers. Some of the candidates will come from a list of item writers BAA has used in the past and others from a set of application forms (produced for each program) by BAA's mass recruiting efforts involving the distribution of application forms (which includes the description of the program being recruited) to school districts along with the description of the program BAA is recruiting for. BAA shall approve all mass communications (i.e. blast emails, press releases, etc.) related to this contract before they are sent.
8. The Contractor's experts and appropriate key personnel in consultation with BAA's content specialists will review current inventory of assessment items in order to identify what type and quantity of items need to be developed for each program, content area, grade level/span, standard, and expectations/strand.
9. The Contractor will develop high-quality training methods and materials for item writers of the various programs in cooperation with BAA staff.
  - a. The training methods and materials shall be consistent across the various programs.
10. The Contractor will develop high-performing item writers to serve as coaches, leaders, and mentors of other item writers.
  - a. This will provide valuable help during the training and writing sessions.
11. The Contractor's staff will train the recruited assessment item writers on how to use the IBS. The Contractor shall maintain an auditable tracking system for identifying the attendance of training participants. The Contractor will compensate the recruited assessment item writers a daily stipend plus travel as explained in the Conducting Meetings section of this Statement of Work.

12. The Contractor will assign specific expectation/strand level item writing assignments to each member of the IWT through the IBS and monitor progress of each assignment.
  - a. The IBS has reports and interface screens to assist in monitoring the progress of item writers' assignments.
  - b. Assignments will include independent items and items linked to contexts (see Context Development).
13. When the IWT members begin writing their items, they will be instructed to only focus on the text of their items. If their item needs media such as audio, video, or artwork/ illustrations, they can enter a conceptual idea for the media request linked to their specific item in IBS. The IWT can save progress of their assignments without submitting. Once an IWT member submits an item it goes to BAA content specialist and the Contractor's content area lead for review. If during the IWT meeting it is determined revisions are needed then the item will be routed back to the respective IWT member to revise.
  - a. All IWT members will have strict deadlines for completion of their assignments. For in-person writing the IWT members will only have the time during their respective IWT in-person meeting to complete their assignments. For remote item writing the respective IWT member will be given up to the 15<sup>th</sup> calendar days to complete his or her assignment.
  - b. Following the start of the contract, the BAA content specialists and the contractor's content specialists will meet to review a detailed list of acceptance criteria specific to each content area.
14. The Contractor will be responsible for reviewing all assessment items developed under the Contract for:
  - i. ITW plagiarism
  - ii. factual, historic, and scientific accuracy
  - iii. grammar use appropriate to grade level and intended assessment population
  - iv. appropriate link to content expectations (strand, standard, and/or benchmark)
15. If BAA accepts the item then the item is considered "Accepted" and the Contractor will compensate the respective IWT member with a per item stipend. No per item stipend will be given for items that are rejected and coded Do Not Use (DNU).
16. Once an item is accepted, it goes to the BAA Composition Group to add any graphic media that was requested and to review formatting. The BAA Composition Group will determine the assignment, workflow, and review of those illustrations linked to accepted items. Creating and adding appropriate artwork/illustrations and other media will not be the responsibility of the Contractor.
17. After the BAA Composition Group work is completed, the item is reviewed by the content lead and then proceeds to the Initial BSC and CAC reviews.
18. **Evaluate member performance:** Following each IWT meeting, the Contractor shall evaluate the performance of each member. The Contractor shall work with BAA to develop an evaluation tool (external to the IBS). This could be an online tool.
  - a. This will be essential in recognizing and bringing high-quality members back for other work or positions, such as:
    - i. Additional IWT member work
    - ii. IWT lead
    - iii. Review committee member
19. Based on the (consensus) committee reviews BAA content specialist and Contractor staff will jointly decide whether to accept the item.
20. After an item is banked the Contractor will work with the BAA to add any item attributes that should follow the item onto assessments, such as reader scripts or use of a calculator, no dictionaries, etc. The IBS has check boxes that are available for common ancillary materials (such

as calculators, rulers, protractors, etc.) as well as an open text field for less common ancillary materials.

21. The BAA will select the items as needed for inclusion in either a standalone Pilot or Field-Test assessment (these are typically small tryouts of 10 to 20 items per form with up to 100 students taking each form, but may become larger scale if necessary, e.g., given to large numbers of students, generally around 2,000) to obtain statistical data to analyze. Following these tryouts, metadata is entered into the IBS for the respective items and then submitted to the SBC and CAC committees for review. Based on the (consensus) committee's opinions, BAA will determine if further revision of the item is needed. If revisions are needed then the Contractor's assigned staff will revise the item to the BAA's specifications.
22. Reserved
23. The BAA conducts Embedded Field Tests. This is accomplished by having several versions (or forms) of an Operational assessment and embedding different Field-Test items into each form.
24. The BAA selects a form of each Operational assessment to create accommodated versions of the assessment. The accommodated form will include audio, video, braille, and enlarged print formats. Please see section 1.023E The Contractor will work with BAA and review attributes for any item selected for inclusion on an accommodated form.
25. Following each assessment cycle, statistical data from all items for that cycle are entered into the IBS by BAA. After this statistical data is entered the Contractor will work with BAA to review the performance of all assessment items and contexts to determine their value for future assessments. Once an assessment item is determined to no longer have any value then that item is coded as retired and may be released to the general public. For context linked assessment items, an item can be retired while the context is still useable. However, if a context is retired then all linked assessment items shall also be retired.

### **C. Writer Training**

Although BAA will be responsible for the initial training of the Contractor's staff, it is imperative that the Contractor develop and provide a high quality training program for the IWT and context writing candidates. The program will have two distinct sections; How to Use the IBS and How to Write High-Quality Items. The "How to Use the IBS" will instruct the candidates about how to get into and access the areas of the IBS that will be required to perform their task(s). The "How to Write High Quality Items" section will focus on the various item types (identified in section 1.012), the content standards, and assessing each member's proficiency in these areas.

The BAA prefers the use of computer-based training materials, and requires that all training materials be the property of the BAA. These training materials may contain screenshots of the IBS but they will not contain links nor be interactive to that system. It is expected that for the first development rounds of this contract the training programs will be instructional. By the beginning of the second year of this contract, the Contractor shall have developed a means for assessing each IWT member's proficiency through an online score collecting process, (external to the IBS). The assessment is expected to be used in determining membership qualifications of all candidates.

The training methods shall incorporate the BAA's standards and requirements for the following:

- a. Choice of topics with respect to frequency of themes appearing across multiple forms, different programs, and sequence of administrations.
- b. Appropriateness of topics with respect to age range, grade level, population, and complexity.
- c. Differences in format for informational passages and narrative passages.
- d. Characteristics of high-quality contexts and items to emulate.

- e. Characteristics of poor-quality contexts and items to avoid.
- f. Checklists for item writers to review their work against before submission to minimize revision requests.
- g. Appropriateness of language use for writing contexts as applied to different age ranges, grade levels, populations, and levels of complexity.
- h. Differences in item type and format.
- i. Creation of non-passage contexts that may apply to multiple items, such as ELPA listening prompts and MEAP maps, charts, or tables.
- j. Writing of accurate and complete media requests needed for context and item graphics.

All training materials, or training systems, developed in connection with this contract shall be the property of the State of Michigan and the BAA.

#### **D. Pilot Tests and Stand Alone Field-Tests**

When a new program is being developed and a sufficient supply of operational items do not exist, then Pilot Tests are administered to get an initial measure for the value and validity of new items. The BAA will use these tests to pilot items for the SCAs, and any new programs. Additional programs may be added but are not expected as of the posting date of this Statement of Work. In some situations with new programs a large-scale stand-alone field-test may be necessary in order to capture a larger sample-size for analysis than pilot-testing provides.

The BAA creates up to four (4) different forms of SCAs for the year. Pilot test results for these assessment items are used to obtain the statistical data for each of these items.

The process for each Pilot Test will be as follows:

1. BAA will identify the dates to administer the Pilot Tests.
2. BAA will provide print-optimized files of all assessment materials.
3. BAA will provide a list of schools, with addresses, that will participate in the Pilot.
4. The Contractor will produce 200 copies of materials for each pilot form to be used by the students (i.e. test booklet of roughly 28-32 pages, answer documents, etc.).
  - a. The test booklets and answer documents shall replicate the print-optimized files provided by BAA. Alterations to content, design, or layout are not allowed.
  - b. The pilot test booklets and answer documents are to be on standard paper stock (20# minimum weight-no bleed through) with black ink.
  - c. If answer documents are not scannable forms; quality-control procedures for data entry must be specified;
5. The Contractor will produce 20 copies of materials to be used by proctors for each form.
  - a. The proctor materials shall replicate the print-optimized files provided by BAA. Alterations to content, design, or layout are not allowed.
  - b. The proctor materials are to be on printed on standard paper stock (20# minimum weight-no bleed through) with black ink.
6. The Contractor will distribute materials to ensure arrival at the schools no earlier than two weeks before and no later than one week before the Pilot Test administration dates.
7. The participating schools shall return all materials to the Contractor via the Contractor's courier account (i.e. FedEx or UPS).
8. The Contractor shall ensure that all Pilot Test materials have been returned.
9. The Contractor shall record the response from each item attempted.
  - a. For multiple-choice items this will be the option selected.

- b. For constructed-response like items this will be the score obtained from the BAA provided rubric (after rangefinding is established).
- 10. The Contractor shall compile a statistics file from the responses.
  - a. This will be an N count of the number of students that selected each option and obtained each score.
  - b. The file should also have the percentage of students that selected each option and obtained each score.
- 11. The Contractor shall then provide BAA with the statistics (scored data) file for quality review. The BAA will then load the file into the IBS.
- 12. The Contractor shall retain all used answer documents for at least one year after the last administration date of the respective Pilot test.
- 13. Other confidential test materials may be destroyed in a secure manner after BAA has accepted the related statistics file.
- 14. For stand-alone large-scale field tests the same process will be followed as pilot tests, just increasing the size of the population tested to ensure a minimum of 1,000 scoreable student submissions.

## **E. Accommodated Versions**

For all of BAA's assessment programs, one form of each Operational and Field Test assessment is also used to create accommodated versions of the respective assessment. Accommodated versions of the Pilot Tests are not created because of the limited number of students participating in those tests. Using a form of an assessment to create accommodated versions is done to sustain the comparability of the accommodated versions with the non-accommodated version. Once an item has been selected to be included on an accommodated form of an assessment the Contractor will ensure that all item attributes are available in the IBS for preparing the accommodated versions.

The Contractor will not be responsible for entering attributes (such as reader scripts and Braille notes, etc.) into the IBS, BAA will be entering the attributes so that the BAA will be able to prepare final assessment materials.

Once an item is selected to be included on an accommodated form, the Contractor may have as little as 30 days to review and prepare all items selected for an accommodated form. (Please note: Attributes are added to an item and the time it is banked in the IBS.) The Contractor shall work with the BAA staff to identify items that are likely to be selected and work on those when time allows. Priority is always given to items that are selected for the accommodated form.

The BAA currently has four accommodation areas that are required for the accommodated form (Braille, enlarged print, audio/reader scripts, and English language learner translations). Braille and enlarged-print accommodations are prepared for all content areas. Audio/reader scripts and English language learner translations are done only for the mathematics, science and social studies content areas only. The final preparation and actual production of the Braille, enlarged print, video, and audio versions of the assessments are not part of the scope of this contract.

### **1. Braille**

All of BAA's programs provide Braille accommodations to students. BAA employs the American Printing House for the Blind (APH) guidelines preparation of the Braille materials provided to students. The Contractor shall use APH certified staff to enter instructions for Braille as well as instructions for the proctor that would be different than those of the non-accommodated version. If

it is determined that an item can not be Brailled due to the wording or media assets, the Contractor shall code the item as such in the IBS.

**2. Enlarged Print**

BAA employs the American Printing House for the Blind (APH) guidelines for enlarged print. Most enlarged-print versions of the BAA assessments are printed on off-white paper for the further benefit of students with visual impairments. The BAA typically increases the non-accommodated versions of the assessment by 35% to prepare the enlarged-print versions (although some items, such as those that involve measurements using rulers, cannot be increased in size without distorting the item). The Contractor will 1) review all selected items for any issues that could arise from doing a simple enlargement and 2) code that information into the IBS.

**3. Audio/Reader Scripts**

Audio/ Reader script accommodations are those that allow the test administration to read items out loud to a student while that student follows along with a non-accommodated printed version. The Audio version is a pre-recorded reading of the assessment. The reader script is a printed version of the assessment that a proctor uses to read the test items to the student. These versions will vary from the non-accommodated printed version of the assessment because they standardize how items are read out loud. The Contractor shall review all selected items and enter the reader scripts into the IBS (indicating how each item shall be read).

**4. English Language Learner (ELL) translations**

The ELL translations follow the same design as the Audio version; however, they also include a video of the non-accommodated version of the assessment to accompany the reading. Due to the size of the populations in Michigan that currently speak Spanish and Arabic as their primary language, the BAA has currently targeted the translation of contexts and items into Spanish and Arabic. Currently BAA provides these accommodations for general assessments, which includes MEAP and MME assessments. The Contractor will translate the reader script in all parts of the item and instructions that are read to the student in the target language.

The Contractor shall use experts in K-12 education as well as English, Spanish and Arabic to translate contexts and items. Spanish translations will be created using Broadcast Spanish. Arabic will be created using Modern Standard Arabic. Each translation shall be adjusted appropriately for the grade level of the item, creating a parallel form to the English version. These translations will be submitted to the BAA in PDF format.

**1.024 Stakeholder Review and Recommendations for Disposition of Items and Contexts**

The work and deliverables required for *Review* are described in the following subsections and listed below.

This process provides integrity and reliability for the quality of all assessment items used in BAA's assessment programs.

1. The BAA uses a combination of staff, contracted experts, and demographically balanced committees to review each assessment item for fairness and accuracy at various points in the development process.
2. In addition, with most of BAA's programs, large group meetings are held with educators in demographically diverse areas of the State to review proposed assessment items.



3. It is required that the experts reviewing a program's contexts and items have not been involved with writing and editing of those contexts and items.. The Contractor must provide a set of standards and assurances that will be followed to ensure an unbiased review of all contexts and items for a program. This will create a synergistic process for context and item reviews.

Please refer to section 1.025 for expectations in preparing for, and conducting meetings with Michigan educators and BAA staff.

#### **A. BSC/CAC**

There are typically two sets of demographically balanced committees that will meet each year for each program, content area and grade span. Occasionally BAA may require a third set of committees for the review of Context, which could become necessary based on the inventory of available contexts for a program. This additional committee would need to be held prior to, and separately from the item review committees.

1. Each committee consists of eight (8) recruited representatives from different demographic and geographic areas of the state. These representatives cannot be employees of the state or any BAA Contractor.
  - a. The Bias/Sensitivity Committee (BSC) reviews the assessment items and contexts for fairness to gender, race, ethnicity, and individuals with disabilities.
  - b. The Content Advisory Committee (CAC) reviews the assessment items and contexts for content and grade level appropriateness.
2. The first set of committee meetings consists of one BSC and one CAC. These meetings are typically held consecutively in sets of one to two days; first BSC for one to two days and then CAC. This scheduling allows the CAC to review only the items that the BSC had already approved. Although, due to the new IBS, BAA may consider concurrent meeting times for these committees. If contractor representatives involved with item development and revision are used as facilitators of either the BSC or CAC the contractor shall provide standards and protocols to assure unbiased review. An example could be that a content expert who facilitates grades 3-4 reading item writing activities, could facilitate reviews of grades 5-6 reading items if their expertise allows.
3. The Contractor shall have at least one staff expert in the specific content area of the meeting attending each respective meeting to instruct the committee members on the use of the IBS for their reviews, to assist them with any specific questions, and to keep conversation impartial and productive, in order to accomplish all of the reviews in the queue. For oversight purposes, the BAA may have one or more of its content specialists at these meetings.
4. The Contractor shall plan to remain onsite, or another agreed-upon location, after committee meetings are held in order to work directly with BAA Development Staff in consolidating review comments.

Historically, a separate set of committee meetings have been held for each program, content and grade span twice each year. The first set, often referred to as Initial Review, is typically conducted in the fall to review new items and contexts. Each committee meets two days to read and analyze each item and context in their queue. The second set of committee meetings, referred to as Data Review, is held within three months after the Pilot or Field test results are received for the specific programs. Please note: For MI-Access, one set of committees reviews Functional Independence, Supported Independence, and Participation assessment items and contexts at the same meeting.

During the Initial Review meetings, contexts for future item writing are reviewed as well as assessment items that have already been created. Occasionally, due to the amount of and/or urgency for new contexts, the English language arts assessments may need a separate Initial Review just for context review. The need for these separate Initial Reviews will be determined by BAA following their analyses of the context inventories each year. Any separate Initial Review for contexts will use the same committee review model as the other Initial Reviews.

When item inventory and time permits, the BAA may require the Initial and Data Review sessions to be conducted during the same set of meetings. For bidding purposes, all such reviews will be conducted in separate meetings as indicated in the aforementioned process.

### **Committee Training**

Although BAA will be responsible for the initial training of the Contractor's staff, it is imperative that the Contractor develop and provide a high-quality context, item writing, and IBS training program for all review committees. The program will have two distinct sections; "How to Use the IBS" and "How to Make High Quality Items." The "How to Use the IBS" section will instruct the candidates about getting into and accessing the areas of the IBS that are needed to perform their work. The "How to Make High Quality Items" section will focus on the various item types (identified in section 1.012), the Michigan Curriculum Framework content expectations and strands, and assessing each member's proficiency in these areas.

The BAA prefers the use of computer-based training materials. The training materials may contain screenshots of the IBS, but will not have links or be interactive to that system. It is expected that for the first development rounds of this statement of work, the training programs will be instructional. By the beginning of the second year of this statement of work, the Contractor shall have developed a means of assessing each member's proficiency through an online score collecting process, external to the IBS. The assessment is expected to assist in determining membership qualifications of candidates

### **Evaluate member performance**

Following each committee meeting the Contractor shall evaluate the performance of each member. The Contractor shall work with BAA to develop an evaluation tool outside of the IBS. This tool may be based online, but must include a record that can be updated each time a committee member is invited to an item design session, a committee review, or a feedback session. The evaluation system will:

- a. identify high-quality members for potential inclusion on future committees, or for elimination from certain committees.
- b. include a way for session leaders to give feedback on the performance of committee members to the Contractor and to BAA staff.
- c. keep records on which committees that the members have served on before.
- d. inform the Contractor and BAA staff which committee members are ineligible to serve on committees where the participants might be reviewing their own items or contexts.
- e. inform the Contractor and BAA staff which committee members might be well-suited as potential group leaders and co-facilitators

The BAA desires to streamline item development and review tasks, and balance the workload as defined in project schedules over the entirety of each year. As part of this proposal please provide a detailed project schedule showing when each set of activities would occur in order to meet the "form

pull” or beginning test development dates as listed below for each program (assume that the beginning of the months listed is the desirable timeframe). The purpose of this “flattening” of the schedule will be to spread the workload for both the Contractor and BAA staff, providing more efficient work and less strain on staffing. The below dates are approximate times when all item development and review activities need to be completed for a current assessment cycle. From that point forward, the BAA Test Development and Composition units begin test construction.

MEAP – March

MEAP-Access - March

MI-Access – March (Grades 3-8) Summer (Grade 11)

MME – July

ELPA – August

SCAs - Fall

IBA – TBD

## **B. Field Review**

Field Reviews are large group meetings with teachers that are held around the state to review assessment items that have received approval from the initial BSC/CAC and BAA review but have not been tried out with students. This process utilizes the knowledge and experience of teachers in the respective content area and grade level(s). Therefore, the need to try out items on small groups of students (Pilot Tests) is eliminated. Assessment items that receive approval from Field Review are put into the large-scale tryouts (Field Tests) that are typically embedded in the respective Operational assessment. The Field Reviews will be used in special situations where Pilot or Field testing would not provide the data needed for a specific assessment.

The special situations that may require the use of a Field review include but are not limited to new assessment programs, major changes to current programs, and researching new item formats and/or item types. BAA will instruct the Contractor as to when the Field Review process will be used during the planning phase of the respective assessment program.

The Field review process may utilize two dissemination methods: electronic or print media, . Electronic dissemination will use the IBS system in a similar manner to the CAC and BSC meetings described elsewhere in this Statement of Work. The paper-based option will be used only as a backup in an emergency or special situation. The need for a paper-based review must be discussed with the BAA Test Development Manager before it is planned.

Field Review is conducted on all assessment items that have been approved by both Initial Review committees (CAC and BSC). The Field Review is eight (8) meetings held with teachers representing the respective content area and grade level(s) of the assessment being reviewed at various locations around the state (e.g. Marquette, Gladwin, Grand Rapids, Novi and/or Sterling Heights). The meetings typically have 12 to 40 teachers who review items assigned to them in the IBS, or handed to them as a printed copy. For bidding purposes assume that each site north of Gaylord, MI will have 12 participants; all others will have 40. The BAA will work with the Contractor during the planning phase to determine how many teachers shall review each item. The teachers assigned to the item shall represent the item’s content and level . The Contractor will facilitate the meetings to ensure that teachers review all of the items in their queue. The BAA will have one or more of its content specialists at these meetings for oversight purposes.

All Field Review meetings using electronic media (IBS) will require a facility with ample seating capacity, and one computer with appropriate software loaded and internet connectivity to meet IBS

requirements for each expected attendee. There shall be a large display screen, projector, and computer that can be used for training and open discussions. The Contractor will be responsible for all basic meeting arrangements and costs as described in section 1.025 of this Statement of Work.

1. The Contractor will work with the BAA to identify and schedule appropriate training of the Contractor's staff on how to use the IBS for stakeholder reviews.
2. The Contractor's experts and appropriate key personnel will meet with the BAA's content specialists to identify appropriate dates for the Field Reviews.
  - a. There will be up to eight (8) Field Review meetings each year.
  - b. Each meeting will cover all items identified for review and could include all assessment areas indicated in this Statement of Work.
3. The Contractor will locate, schedule, and pay for the various meeting facilities with ample seating capacity, a large screen, projector, and computer and Internet access to hold the meetings.
4. The Contractor's staff will be required to prepare and process all communications related to the recruiting of participants. BAA shall approve all mass communications (i.e. blast emails, press releases, etc.) related to this contract before they are sent.
5. The IBS will be used to queue items and context for review. Prior to each set of meetings the Contractor will review the type and quantities of contexts and items in the queue.
6. For paper-based reviews the Contractor will prepare ample hard copy packets of items to be reviewed for each projected attendee.
7. For computer-based reviews the Contractor shall make sure computers, that are sufficiently updated with internet access to meet the requirements of the IBS, and available for all expected attendees.
8. The Contractor shall take notes of comments made about each item during the meeting.
9. The Contractor shall collect all packets at the end of each meeting.
  - a. The Contractor shall have a system for accounting that all secure materials have been returned.
  - b. All used packets shall be retained for at least one (1) year from the date of the meeting.
10. The Contractor shall enter the consensus opinion(s) of each item in the IBS following each meeting.
11. All other directives and instructions that appear in the BAA's *Assessment Integrity Guide* shall be upheld, including but not limited to:
  - a. Not allowing any committee member to photocopy or capture images of materials distributed to them during meetings.
  - b. Not allowing any committee member to alter or edit items distributed to them during meetings.
  - c. Collecting signed Security Compliance Forms from each committee member before a meeting commences.

### **1.025 Conducting Meetings**

Throughout the term of this contract, there will be many meetings pertaining to the tasks covered by this Statement of Work (In both the development and the review activities). The Contractor shall be responsible for arrangements and compensation for all of the meetings included in this Statement of Work. There are basic and specific meeting responsibilities. The basic meeting responsibilities are required of the Contractor for all meetings identified for this contract. *Failure by the Contractor to provide any of the responsibilities listed in this section may result in non-payment of all costs related to the respective meeting(s) and require the Contractor to arrange and pay for a replacement meeting.*

#### **A. Basic Meeting Responsibilities of Contractor**

1. In consultation with BAA, identify meeting titles, dates, and attendees.
2. Locate, reserve, and pay for a facility on the date(s) identified. The facility shall have:
  - a. Seating capacity for the expected attendees.
  - b. A large display screen that can easily be seen by all attendees.
  - c. ADA compliance.
  - d. Unless specifically indicated to the contrary, all meetings will be held in Lansing, Michigan. DRC will lease up to 10,000 square feet of office space in Lansing to use for the committee meetings throughout the year. This permanent facility will enhance DRC's ability to effectively manage the meetings, and will provide a consistent meeting location for Michigan educators and OEAA staff. It will also provide economic benefit to the area.
3. Arrange and pay for overnight accommodations for multi-day meetings for any attendee traveling between 50 and 150 miles to the meeting.
4. Arrange and pay for overnight accommodations for the night before, the night(s) during, and the night following any meeting for any attendee traveling over 150 miles to the meeting.
5. Provide transportation for any attendee traveling out-of-state.
  - a. Shall have written approval from BAA's director before transportation arrangements are made.
6. Provide refreshments (water, coffee, tea, juice, soft drinks, and healthy snacks) for all attendees.
7. Provide healthy lunches to all attendees for meetings lasting more than four (4) hours and beginning before 12pm EST/EDT.
8. Prepare an agenda for the meeting.
9. Send out and track invitations to each meeting.
  - a. Send copies of agenda with invitations.
  - b. Provide copies of notes from previous meetings where necessary and possible.
10. Set up, and ensure all attendees sign a sign-in sheet for each meeting with the title and date of the meeting.
  - a. All attendees shall sign in, including Contractor's staff, the BAA staff, and committee members.
  - b. Set up a separate sign-in sheet for each date of a meeting. For example, if one meeting lasts two days then there shall be a separate sign-in sheet for each day.
  - c. The original sign-in sheets shall be given to BAA within five (5) business days following the meeting.
  - d. The Contractor shall retain a copy of the sign-in sheets for up to two (2) years following the end of the term of this contract.
11. Prepare and maintain accurate minutes of each meeting. The Contractor shall include with their proposal an example of the minute structure their staff will use.
  - a. Send BAA a copy of the minutes within three (3) business days following the meeting.
  - b. Publish final minutes and any stakeholder comments to a password-protected shared data source.

## **B. Responsibilities of Contractor for Specific Meetings**

### **1. Management Meetings**

- a. At least four (4) members of BAA staff will meet at least monthly with at least four (4) of the Contractor's key staff to review completed, current and future tasks and their timelines.
  - i) During the first year of this contract, or during peak times, these meetings may be held weekly.

- ii) The Contractor Lead for each content area shall attend these meetings unless otherwise indicated in writing by BAA.
  - iii) BAA reserves the right to require other key staff of the Contractor to attend one or more of these meetings. BAA will notify the Contractor's Project Manager in writing of any such individual required to attend in reasonable time for the Contractor to accommodate.
- b. Four (4) management meetings, one every three months, shall be in-person meetings, which can rotate between BAA's office in Lansing, MI, and the Contractor's primary facility. These are not to be the same as the Executive Management Meetings.
- c. Web conferencing or teleconferencing can also be used.
- d. The BAA Contract Change Request Control Statement shall be read at the beginning and at the conclusion of all management meetings.

## 2. **Executive Management Meetings**

- a. At least three (3) of each of BAA's and the Contractor's senior officers shall meet at least twice a year to review overall contract performance.
  - i. These are high-level meetings to review project goals, assess foreseeable risks, address major issues, and discuss financial matters.
  - ii. The frequency of these meetings may be increased at the discretion of BAA's Director.
- b. These are all in-person meetings.
- c. The meetings will be held in rotation between the Contractor's primary facility and BAA's office in Lansing, MI.
- d. The first meeting shall be held within 60 calendar days of contract award.
- e. The BAA Contract Change Request Control Statement shall be read at the beginning and at the conclusion of all executive management meetings.

## 3. **Context Writer Meetings**

- a) Refer to section 1.023 for a description of these meetings.
- b) The primary purpose of the Context Writer meetings is to train new context writers on how to use the IBS.
- c) Any Context Writer meetings that do not involve training shall follow the responsibilities listed in section 1.025.A.
- d) The Context Writer training meetings are expected to be one day per group.
- e) All new context writers shall receive in-person training.
- f) All Context Writer training meetings will require a facility that has a computer with appropriate software and internet access for each invited Context writer.
- g) Each computer shall have the following, or newer versions thereof, installed before the meeting:
  - i) Microsoft Windows XP.
  - ii) Internet Explorer 6.0. Other web browsers such as Safari, Firefox, Opera, Google Chrome, and others will not work with the IBS.
  - iii) Internet access with firewall protection.
  - iv) anti-virus and anti-spyware applications with the definition updates no more than 10 days old.
    - (a) Acceptable applications are Symantec Endpoint Protection, Symantec's Norton 360, McAfee Antivirus and Security, CA Security Center, and SpyBot Search & Destroy.
    - (b) Other applications shall be reviewed by BAA on a case-by-case basis.
- v) Minimum CPU speed of 2.0 GHz.

- vi) Minimum memory capacity of 2.0 Gb.
- h) Prior to each meeting the Contractor shall ensure that
  - i) all computers meet BAA requirements.
  - ii) each computer is turned on and functioning properly.
  - iii) Internet access is working.
- i) At the end of each day the Contractor shall clear the cache of each computer before they leave the facility for that day.
  - i) This shall be done even when the committee will be returning the next day.
- j) All Context Writers attending the in-person training meeting shall be compensated, by the Contractor, \$100.00 for each day they are in attendance.
  - i) Prorate for any writer that leaves the meeting early or shows up late.
- k) After training, the context Writers will access the IBS via the internet to complete their assignments.
  - i) If training finishes early the writers may use the remainder of the day to work on their assignments.
- l) The Contractor will issue and track all context writing assignments through the IBS.
- m) The Contractor will use the IBS to notify each Context Writer of the deadline of each writing assignment.
  - i) Failure of the context Writer to meet the deadline may result in the assignment being issued to another writer.
  - ii) Repeated failures to meet deadlines may result in reductions in the number of future assignments.
- n) The Contractor shall compensate each context writer for their completed assignments as follows:
  - i) \$300 for each commissioned context that receives BAA and Initial Review approval.
  - ii) \$150 for each commissioned context they edited that was originally created by another Context Writer. The context must receive BAA and Initial Review approval following the edits before compensation is issued.
  - iii) \$50 for each permissioned or public domain context approved by BAA and entered into the IBS without errors.
- o) **Evaluate writer performance:** Contractor shall evaluate the performance of each context writer after each context writing session. The Contractor shall work with BAA to develop an evaluation tool outside of the IBS. This tool could be online based. The evaluations will be used to determine the reliability of each writer and impact the extent and volume of future writing assignments. Refer to section above (see page 25)

#### 4. **Item Writing Team (IWT) Meetings**

- a) Refer to section 1.023 for a description of these meetings.
- b) During the first rounds of item writing, each IWT meeting shall last three (3) consecutive days.
  - i) The duration may be adjusted, upon BAA approval, in future rounds.
- c) The IWT meetings will be used to train new users to the IBS, issue writing assignments to each member via the IBS and write items.
- d) IWT members are those invited to write items.
- e) None of the Contractor's or BAA's staff can be IWT members.
- f) There will be up to 12 IWT members invited to each IWT.
- g) BAA strives to have at least 50% new members each year.
- h) No member shall be invited to attend the same IWT more than three consecutive times.

- i) All IWT meetings will require a facility that has a computer with appropriate software and Internet access for each invited IWT member.
- j) Each computer shall have the following, or newer versions thereof, installed before the meeting:
  - i) Microsoft Windows XP.
  - ii) Internet Explorer 6.0. Other web browsers such as Safari, Firefox, Opera, Google Chrome, and others will not work with the IBS.
  - iii) Internet access with firewall protection.
  - iv) anti-virus and anti-spyware applications with the definition updates no more than 10 days old.
    - (a) Acceptable applications are Symantec Endpoint Protection, Symantec's Norton 360, McAfee Antivirus and Security, CA Security Center, and SpyBot Search & Destroy.
    - (b) Other applications shall be reviewed by BAA on a case-by-case basis.
  - v) Minimum CPU speed of 2.0 GHz.
  - vi) Minimum memory capacity of 2.0 Gb.
- k) Prior to each meeting the Contractor shall ensure that
  - i) all computers meets BAA requirements.
  - ii) each computer is turned on and functioning properly.
  - iii) Internet access is working.
- l) During each meeting the Contractor shall monitor each IWT member to ensure no one is making/taking copies of contexts and/or items for use outside of the IWT meeting. Special attention shall be given, but not limited, to the following activities:
  - i) taking pictures
  - ii) texting
  - iii) emailing
  - iv) using flash keys(drives) or other media storage devices
  - v) using cell phones, smart phones, PDAs, etc.
- m) At the end of each day the Contractor shall clear the cache of each computer before they leave the facility for that day.
  - i) This shall be done even when the committee will be returning the next day.
- n) Except for the assessments with the ACT or WorkKeys (WK) sources, there will be a separate IWT for each assessment. The ACT and WK item development are not part of this Statement of Work.
- o) Except for SCA, each team is expected to meet once each year. Up to four (4) of the SCA IWTs will meet each year.
- p) The Contractor shall have one of their staff at each meeting to train the IWT members, issue writing assignments via the IBS, and facilitate.
- q) The Contractor's staff shall be in attendance throughout the duration of each meeting.
- r) The Contractor will use the IBS to instruct the IWT on the deadline for their assignments.
- s) Several meetings may be held concurrently but in separate rooms.
- t) The meeting room shall also have a projector connected to a computer with Internet access.
- u) Web/Teleconferencing is NOT allowed for these meetings.
- v) For in-person only meetings, the IWT will have only the days of the meeting to complete their assignments. For remote writing the IWT shall have 15 Calendar days following their respective meeting to complete their writing assignments in the ISB using their own computer and Internet access.
- w) All IWT members attending the in-person IWT meeting shall be compensated, by the Contractor, \$100.00 for each day they are in attendance.
  - i) Prorate for any member that leaves the meeting early or shows up late.



- x) Each IWT meeting shall have one member designated as the IWT Lead for that meeting. The IWT Lead shall:
  - i) assist the Contractor in facilitating the training and writing session.
  - ii) receive an extra \$50 per day compensation (\$150 per day total).
  - iii) Write items.
  - iv) All other directives and instructions that appear in the BAA's *Assessment Integrity Guide* shall be upheld, including but not limited to:
    - (1) Not allowing any committee member to photocopy, or capture images of, materials distributed to them during meetings.
    - (2) Not allowing any committee member to alter or edit items distributed to them during meetings.
    - (3) Collecting signed Security Compliance Forms from each committee member before a meeting commences.
- y) If an IWT member's school district hires a substitute teacher for any of the dates the IWT member is in attendance at one of the respective meetings then the Contractor shall reimburse that school district \$120 for each day the substitute is needed because of the IWT meeting.
- z) Each IWT member shall also be compensated \$25 for each multiple-choice item - \$35 for each constructed-response item - they submit that is also approved by BAA.
  - i) The IBS will provide reports regarding item maturities by IWT member.
- aa) Each IWT member shall also be reimbursed by the Contractor for travel expenses at the state rate in effect on the date of travel. The state rates are posted on the website located at [http://www.michigan.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html).
- bb) The daily compensation and travel reimbursement shall be processed and disbursed within 30 days of the meeting.
- cc) The per item compensation shall be processed and disbursed within 45 days after the is accepted.
  - i) It is expected that the per item compensation can be batch processed once per month for all items approved the previous month.
- dd) **Evaluate writer performance:** Following each Item Writing session the Contractor shall evaluate the performance of each member. The Contractor shall work with BAA to develop an evaluation tool outside of the IBS. This tool could be online based.
  - i) This will be valuable in bringing high-quality members back for other work or positions, such as:
    - (a) Additional Review committee member work.
    - (b) Committee lead.
    - (c) IWT members or members for other committees or programs.
  - ii) The evaluation system shall include a way for session leaders to give feedback on the performance of committee members to the Contractor and to BAA staff (refer to section above).

## 5. BSC and CAC Meetings

- a) Refer to section 1.024 for descriptions of these meetings.
- b) BSC and CAC members (committees) are those invited to review assessment items and contexts. None of the Contractor's or the BAA's staff can be BSC or CAC members.
- c) Each BSC will have a separate but related CAC to form one set of committees.
- d) There will be up to 8 to 10 members invited to each committee meeting—20 to each set of committees.
  - i) BAA strives to have at least 50% new members at each meeting.

- ii) No member of one committee may be a member of the other committee in the same set.
  - iii) No member shall be invited to attend the same committee more than three consecutive times.
- e) All committee meetings will require a facility that has a computer with appropriate software and Internet access for each invited committee member.
  - i) Each computer shall have the following, or newer versions thereof, installed before the meeting:
    - (a) Microsoft Windows XP
    - (b) Internet Explorer 6.0. Other web browsers such as Safari, Firefox, Opera, Google Chrome, and others will not work with the IBS.
    - (c) Internet access with firewall protection.
    - (d) anti-virus and anti-spyware applications with the definition updates no more than 10 days old.
      - 1. Acceptable applications are Symantec Endpoint Protection, Symantec's Norton 360, McAfee Antivirus and Security, CA Security Center, and SpyBot Search & Destroy,.
      - 2. Other applications shall be reviewed by BAA on a case-by-case basis.
    - (e) Minimum CPU speed of 2.0 GHz.
    - (f) Minimum memory capacity of 2.0 Gb.
- f) Prior to each meeting the Contractor shall ensure that
  - i) each computer is turned on and functioning properly.
  - ii) Internet access is working.
  - iii) all computers meet BAA requirements.
- g) During each meeting the Contractor shall monitor each committee member to assure they are not making/taking copies of contexts and/or items for use outside of the committee meeting. Particular attention shall be made, but not limited, to the following activities:
  - i) taking pictures
  - ii) texting
  - iii) emailing
  - iv) using flash keys(drives) or other media storage devices.
  - v) using cellphones, smart phones, PDAs, etc.
- h) At the end of each day the Contractor shall clear the cache of each computer before they leave the facility for that day.
  - i) This shall be done even when the committee will be returning the next day.
- i) There will be two sets of committees each year for each grouping, one for Initial Review and the other for Data Review.
  - i) Each Initial Review committee meeting's duration shall be two (2) consecutive days.
  - ii) Each Data Review committee meeting shall be one (1) day.
  - iii) The Contractor shall plan to remain onsite for one (1) additional day after the committee meetings to work with BAA Development Staff to consolidate review comments.
- j) The Contractor shall have one of their staff at each committee meeting to train the members and facilitate.
  - i) The Contractor's staff shall be in attendance throughout the duration of each meeting.
- k) Several meetings may be held concurrently but in separate rooms.
- l) Each meeting room shall also have a projector connected to a computer with Internet access.

- m) Web/Teleconferencing is NOT allowed for these meetings.
- n) All committee members attending the meeting shall be compensated, by the Contractor, \$250.00 for each day they are in attendance.
  - i) Prorate for any member that leaves the meeting early or shows up late.
- o) Each committee meeting shall have one member designated as the Committee Lead for that meeting. The Committee Lead shall:
  - i) assist the Contractor in facilitating the training and review session.
  - ii) receive an extra \$50 per day compensation (\$300 per day total).
  - iii) review items.
- p) If a committee member's school district hires a substitute teacher for any of the dates the committee member is in attendance at one of the respective meetings then the Contractor shall reimburse that school district \$120 for each day the substitute is needed because of the committee meeting.
- q) Each committee member shall also be reimbursed by the Contractor for travel expenses at the state rate in effect on the date of travel. The state rates are posted on the website located at [http://www.michigan.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html).
- r) The daily compensation and travel reimbursement shall be processed and disbursed within 30 days of the meeting.
- s) **Evaluate member performance:** Following each committee meeting the Contractor shall evaluate the performance of each committee member. The Contractor shall work with BAA to develop an evaluation tool outside of the IBS. This tool could be online based.
  - i) This will be valuable in bringing high-quality members back for other work or positions, such as (refer to portion above):
    - (a) Additional Review committee member work
    - (b) Committee lead
    - (c) IWT member

## 6. Field Review Meetings

- a) Refer to section 1.024 for a description of these meetings.
- b) These meetings require BAA's and the Contractor's staff to travel.
- c) The meetings will be conducted similar to the CAC and BSC meetings described in the previous section with the following exceptions:
  - i) None of the Field Review invitees shall receive compensation or travel reimbursement.
  - ii) There will be no substitute teacher reimbursements.
  - iii) There will be up to 40 participants expected at each meeting.
  - iv) The duration will only be one (1) day at each site.
  - v) There will be up to eight (8) Field review sites. Each site will have a different set of participants.
  - vi) If the paper-based method is being used then hard copies of items will be provided by the Contractor in lieu of, or in addition to, the computers.

## 1.026 Program Development

There are many stakeholders for the programs described within this contract that present BAA with a plethora of research and training requests each year as well as Formative Assessments activities. Together with its Contractors, BAA expects to be able to handle most of these requests. Some of these unforeseen requests may require short turnaround times and/or additional resources to complete, and therefore may require obtaining additional resources.

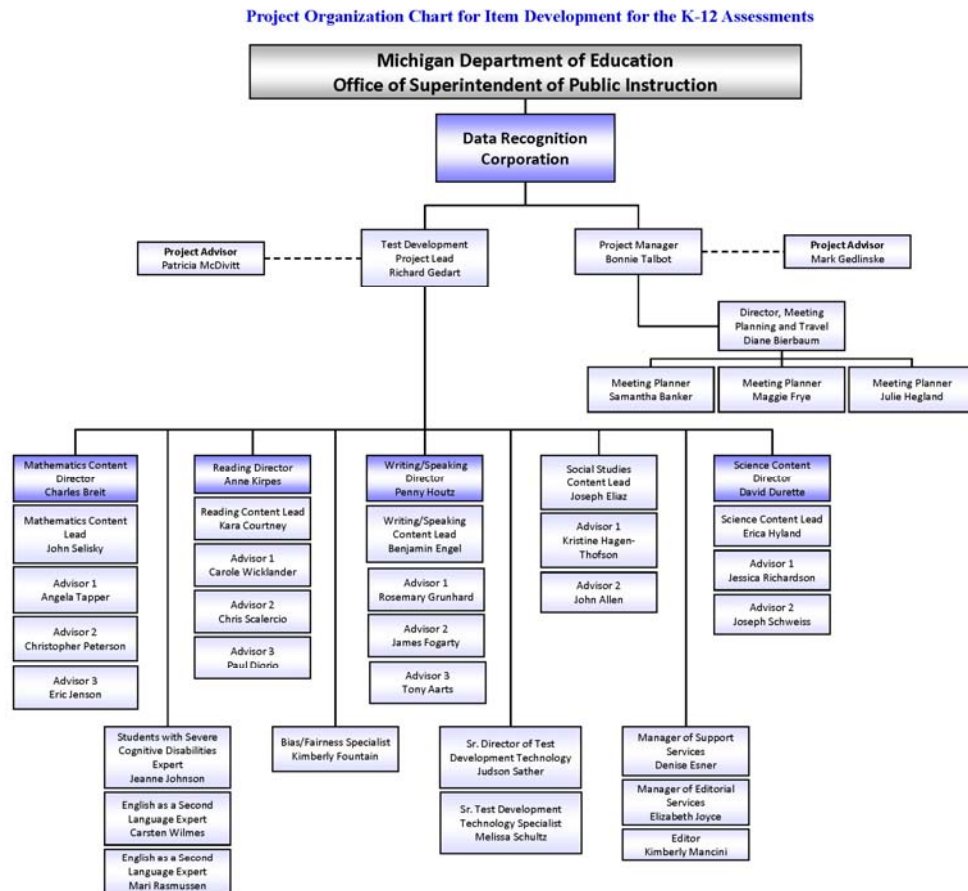
In addition, staff may need to attend specific training sessions to maintain their expertise in the programs identified within this Statement of Work. Staff may also be required to provide training to large groups of stakeholders regarding one or more of these programs.

Upon written approval of the BAA Director, the Contractor shall contract with and compensate individuals and organizations selected by the BAA Director to cover the aforementioned needs within this section. Line items are included in the price sheet related to this section.

## 1.030 Roles and Responsibilities

### 1.031 Contractor Staff, Roles, and Responsibilities

The Contractor staffing organization chart provided below, and their percent efforts, that will be needed to fulfill the tasks and activities as stated in the Statement of Work.



May 25, 2011

## 1.040 Project Plan

### 1.041 Project Plan Management

The activities addressed in this Statement of Work require the Contractor to develop the overall plan for developing high-quality assessment items for the State's K-12 assessment programs. The BAA may include additional milestone dates as deemed necessary following subsequent contract years.

However, with the introduction of the Item Banking System (IBS) and the involvement of the Contractor as the item and context developer and reviewer engaged on a year-round basis, peak times of activity shown below can now be more evenly distributed throughout the year.

The Contractor is required to submit an overall plan showing how the development and review activities for each of the programs might fit into a "flattened," year-round, project-driven schedule, with appropriate resource allocations shown for each phase of the plan.

This plan must articulate the in scope work with the staffing plan as described in Section 1.030 above, with an explanation of how staff roles will meet the target work effort percentages provided in the staffing plan. The Contractor will address the issue of flattening the workload throughout the year to avoid spike in activities and delays in deliverables.

### **1.042 Reports**

In addition to documentation required in other sections of this Statement of Work, the Contractor shall describe any reports they believe would be valuable in managing the aforementioned activities. These include but are not limited to:

- ☐ Reports describing the procedures and results of bias and sensitivity reviews
- ☐ Reports describing the procedures and results of content reviews
- ☐ Authorship, along with BAA content leads, of the item and test development portions of the program specific technical reports (managed by BAA Measurement Research and Psychometrics)
- ☐ Documentation of the contractors role in any standard setting activities (as applicable)

### **1.050 Acceptance**

#### **1.051 Criteria**

The following criteria will be used by the State to determine acceptance of the services or deliverables provided under this Statement of Work:

The BAA will be using various queries and reports in the IBS to review the assessment context and item development progress.

The Development work will be monitored for:

- recruiting, scheduling, develop training materials and conducting the context and item writing sessions
- ensuring sufficient contexts and items of high quality are written to meet each program's needs
- editing all items designated by BAA and the review activity as needing such edits
- sending BAA original sign-in sheets following each meeting
- reimbursing each meeting attendee appropriately and timely (within four (4) weeks from the conclusion of meeting)
- paying each context and item writer appropriately and timely (within four (4) weeks from the date of acceptance by BAA)
- having appropriate staff at each meeting

The Review work will be monitored for:

- recruiting, scheduling, and develop training materials conducting the committee review sessions
- ensuring sufficient committee reviews are held on a timely basis to meet each program's needs
- ensuring each committee reviews all items within their queue
- reviewing each committee member's opinion for each context and item, and creating a consensus opinion for each
- sending BAA original sign-in sheets following each meeting
- paying each meeting attendee appropriately and timely (within four (4) weeks from the conclusion of meeting)
- having appropriate staff at each meeting

### **1.052 Final Acceptance**

Final acceptance is when all of the criteria in section 1.051 have been met to the satisfaction of BAA.

### **1.060 Proposal Pricing**

#### **1.061 Proposal Pricing**

For an authorized price list, see Attachment A. Contractors shall use the authorized price list with their proposal. Contractor may include additional line items in the price list with a comprehensive description of each added line item to accompany the price list.

Contractors are encouraged to offer quick payment terms (i.e. 10% discount off invoice if paid within 10 days). This information can be noted on the Contractors price proposal (see Attachment A). This may be a factor considered in our award decision.

Notwithstanding any requirements as noted in Article 2, compensation will be through an invoicing process for actual items and quantities approved in writing by the MDE Contract Compliance Inspector (CCI) and actually provided/produced by the Contractor that meets the specification of this contract and using the appropriate rates provided by the Contractor in Attachment A: Pricing. With each invoice, the Contractor shall provide a report that lists, at minimum for each line item being billed, the quantities ordered and the quantities actually provided/produced. Each invoice shall clearly segregate charges by programs (i.e. MEAP, MME, MI-Access, MEAP-Access, IBA/ Formative Assessment related activities, ELPA, SCA).

All rates shall be stand-alone. If any line in the pricing list is reduced or increased in part, or in its entirety, it shall not affect that or any other price/rate.

Quantities listed in the pricing list are estimates for budget purposes. They are not to be construed as an order. The Contractor shall have written approval of quantities and/or tasks from the MDE CCI (or designee) before beginning work on any line item.

With the exception of severe market changes outside the control of the Contractor that occur after the date the bids are submitted, any short-sightedness of the Contractor to provide sufficient resources for the deliverables of this contract and within the established timelines shall not be an acceptable reason for changing any price/rate.

#### **1.062 Price Term**

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

#### **1.063 Tax Excluded from Price**

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices shall not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.



(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is for a period of five (5) years beginning date of award. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 Options to Renew**

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

#### **2.003 Legal Effect**

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

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

#### **2.004 Attachments & Exhibits**

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

#### **2.005 Ordering**

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

#### **2.006 Order of Precedence**

(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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract 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 the Contract, which may be modified or amended only by a formal Contract amendment.

#### **2.007 Headings**

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

#### **2.008 Form, Function & Utility**

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

#### **2.009 Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

#### **2.010 Consents and Approvals**

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

#### **2.011 No Waiver of Default**

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

#### **2.012 Survival**

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

### **2.020 Contract Administration**

#### **2.021 Issuing Office**

The Contract is issued by the Department of Technology Management and Budget, Purchasing Operations and Michigan Department of Education Office of Educational Assessment and Accountability (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 the Contract.** The Contractor Administrator within Purchasing Operations for the Contract is:

Brandon Samuel, Buyer Specialist  
Purchasing Operations  
Department of Technology Management and Budget

Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email SamuelB@michigan.gov  
Phone 517/ 241- 1218

## **2.022 Contract Compliance Inspector**

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

Douglas Collier Contracts and Finance Manager  
Michigan Department of Education,  
Office of Educational Assessment and Accountability  
608 W. Allegan Ave  
Email: collierd1@michigan.gov  
Phone: (517) 241-4431

## **2.023 Project Manager**

The following individual will oversee the project:

Dr. Vincent Dean, Assessments Manager  
Michigan Department of Education,  
Office of Educational Assessment and Accountability  
608 W. Allegan Ave  
Email: DeanV@michigan.gov  
Phone: (517) 241-2694

## **2.024 Change Requests**

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

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

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice

must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a “Contract Change Notice”).

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Purchasing Operations.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

## **2.025 Notices**

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor’s contact as noted on the cover page of the contract, upon:

(i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

## **2.026 Binding Commitments**

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

## **2.027 Relationship of the Parties**

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

## **2.028 Covenant of Good Faith**

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

## **2.029 Assignments**

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

responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

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

## **2.030 General Provisions**

### **2.031 Media Releases**

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

### **2.032 Contract Distribution**

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

### **2.033 Permits**

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

### **2.034 Website Incorporation**

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

### **2.035 Future Bidding Preclusion**

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

### **2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

### **2.037 Disaster Recovery**

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

## **2.040 Financial Provisions**

### **2.041 Fixed Prices for Services/Deliverables**

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

### **2.042 Adjustments for Reductions in Scope of Services/Deliverables**

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

### **2.043 Services/Deliverables Covered**

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

### **2.044 Invoicing and Payment – In General**

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the

payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

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

#### **2.045 Pro-ration**

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

#### **2.046 Antitrust Assignment**

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

#### **2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

#### **2.048 Electronic Payment Requirement**

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

### **2.050 Taxes**

#### **2.051 Employment Taxes**

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

#### **2.052 Sales and Use Taxes**

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



partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

## **2.060 Contract Management**

### **2.061 Contractor Personnel Qualifications**

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

### **2.062 Contractor Key Personnel**

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

### **2.064 Contractor Personnel Location**

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

### **2.065 Contractor Identification**

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

### **2.066 Cooperation with Third Parties**

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

### **2.067 Contractor Return of State Equipment/Resources**

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

### **2.068 Contract Management Responsibilities**

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

## **2.070 Subcontracting by Contractor**

### **2.071 Contractor Full Responsibility**

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

### **2.072 State Consent to Delegation**

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

### **2.073 Subcontractor Bound to Contract**

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

### **2.074 Flow Down**

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

### **2.075 Competitive Selection**

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

## **2.080 State Responsibilities**

### **2.081 Equipment**

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

### **2.082 Facilities**

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

## **2.090 Security**

### **2.091 Background Checks**

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

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

### **2.092 Security Breach Notification**

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

### **2.093 Deleted N/A**

## **2.100 Confidentiality**

### **2.101 Confidentiality**

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

### **2.102 Protection and Destruction of Confidential Information**

The State and Contractor must 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 the 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 must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

### **2.103 Exclusions**

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

#### **2.104 No Implied Rights**

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

#### **2.105 Respective Obligations**

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

### **2.110 Records and Inspections**

#### **2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

#### **2.112 Examination of Records**

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

#### **2.113 Retention of Records**

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

#### **2.114 Audit Resolution**

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

### **2.115 Errors**

- (a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

### **2.120 Warranties**

#### **2.121 Warranties and Representations**

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Purchasing Operations.

#### **2.122 Warranty of Merchantability**

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

#### **2.123 Warranty of Fitness for a Particular Purpose**

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

#### **2.124 Warranty of Title**

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

#### **2.125 Deleted N/A**

#### **2.126 Equipment to be New**

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

#### **2.127 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, is 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 must remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

#### **2.128 Consequences For Breach**

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

### **2.130 Insurance**



### **2.131 Liability Insurance**

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

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

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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See [www.michigan.gov/deleg](http://www.michigan.gov/deleg).

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

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

- ☒ 1. Commercial General Liability with the following minimum coverage:

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

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

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

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

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable

coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

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

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

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

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

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

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

### **2.132 Subcontractor Insurance Coverage**

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

### **2.133 Certificates of Insurance and Other Requirements**

Contractor must furnish to DTMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the

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

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State’s written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

## **2.140 Indemnification**

### **2.141 General Indemnification**

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

### **2.142 Code Indemnification**

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

### **2.143 Employee Indemnification**

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

greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

#### **2.144 Patent/Copyright Infringement Indemnification**

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

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

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

#### **2.145 Continuation of Indemnification Obligations**

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

#### **2.146 Indemnification Procedures**

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

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

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

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

## **2.150 Termination/Cancellation**

### **2.151 Notice and Right to Cure**

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

### **2.152 Termination for Cause**

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

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

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

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

### **2.153 Termination for Convenience**

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

### **2.154 Termination for Non-Appropriation**

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

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

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

competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

#### **2.155 Termination for Criminal Conviction**

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

#### **2.156 Termination for Approvals Rescinded**

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

#### **2.157 Rights and Obligations upon Termination**

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

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

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

#### **2.158 Reservation of Rights**

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

## **2.160 Termination by Contractor**

### **2.161 Termination by Contractor**

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

## **2.170 Transition Responsibilities**

### **2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed sixty (60) calendar days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

### **2.172 Contractor Personnel Transition**

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

### **2.173 Contractor Information Transition**

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

### **2.174 Contractor Software Transition**



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

#### **2.175 Transition Payments**

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

#### **2.176 State Transition Responsibilities**

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

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

### **2.180 Stop Work**

#### **2.181 Stop Work Orders**

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

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

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

#### **2.183 Allowance of Contractor Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving

at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

### **2.190 Dispute Resolution**

#### **2.191 In General**

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

#### **2.192 Informal Dispute Resolution**

- (a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
  - (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
  - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
  - (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

#### **2.193 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so

immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

#### **2.194 Continued Performance**

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

### **2.200 Federal and State Contract Requirements**

#### **2.201 Nondiscrimination**

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

#### **2.202 Unfair Labor Practices**

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

#### **2.203 Workplace Safety and Discriminatory Harassment**

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

#### **2.204 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 the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Energy, 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 must 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 the Contract in privity of contract with the Contractor must 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 Energy, Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must 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 must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

### **2.210 Governing Law**

#### **2.211 Governing Law**

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

#### **2.212 Compliance with Laws**

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

#### **2.213 Jurisdiction**

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

### **2.220 Limitation of Liability**

#### **2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the 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 the Contract.

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

### **2.230 Disclosure Responsibilities**

#### **2.231 Disclosure of Litigation**

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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
- (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Purchasing Operations.
- (2) Contractor must also notify DTMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DTMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

### **2.232 Call Center Disclosure**

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

### **2.233 Bankruptcy**

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

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

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

## **2.240 Performance**

### **2.241 Time of Performance**

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State’s failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

### **2.242 Deleted N/A**

### **2.243 Liquidated Damages**

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal of key personnel 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 2.152**, 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 is \$50,000.00 per individual if the Contractor does not identify a replacement approved by the State under **Section 2.060** at the time of removal (“Unauthorized removal without a replacement”). The Contractor must pay an additional \$1,000.00 per calendar day starting on the fourth calendar day following the Unauthorized Removal for each day a replacement approved by the State under **Section 2.060** is not provided. There is no limit to the total liquidated damages for Unauthorized Removal without a replacement.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$5,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** at the time of removal (“Unauthorized Removal with a replacement”). The Contractor must assign the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel’s removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$5,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$1,000.00 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$30,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal with a replacement and failure to provide 30 days of shadowing must not exceed \$35,000.00 per individual.

#### **2.244 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 the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

## **2.250    *Reserved***

## **2.260    *Ownership***

### **2.261    Ownership of Work Product by State**

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

### **2.262    Vesting of Rights**

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

### **2.263    Rights in Data**

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

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



law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

#### **2.264 Ownership of Materials**

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

### **2.270 State Standards**

#### **2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

#### **2.272 Acceptable Use Policy**

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

#### **2.273 Systems Changes**

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

### **2.280 Reserved**

### **2.290 Environmental Provision**

#### **2.291 Environmental Provision**

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, 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.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a

safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

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

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

#### Refrigeration and Air Conditioning:

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

#### Environmental Performance:

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

### **2.300 Other Provisions**

#### **2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

Attachment A, Pricing (attached as separate document)