

STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
Grants and Purchasing Division  
320 South Walnut Street  
Lansing, Michigan 48913

**CONTRACT NO. 391B3200002**  
**between**  
**THE DEPARTMENT OF COMMUNITY HEALTH**  
**and**

|  |   |
|--|---|
| NAME & ADDRESS OF VENDOR<br><br><b>EMSystems, LLC</b><br><b>(d/b/a) Intermedix EMSystems</b><br><b>135 So. 84<sup>th</sup> Street, Suite 150</b><br><b>Mikwaukee, WI 53214</b>   | TELEPHONE<br><b>(414) 721-9729</b><br><br>VENDOR NUMBER/MAIL CODE<br><br>AGENCY<br>CONTACT: (414) 721-0729<br>Max Wippich<br>Max.wippich@intermedix.com |
| Contract Administrator: Gregory Rivet  |   |
| Description:<br><p style="text-align: center;"><b>MI HAN and MI Volunteer System</b></p>   |   |
| CONTRACT PERIOD: From: <b>1/1/2013</b> To: <b>12/31/2015</b>   |   |
| TERMS<br><p style="text-align: center;"><u><b>Net 30 days</b></u></p>  |   |
| MISCELLANEOUS INFORMATION:<br><br><p><b>The terms and conditions of this Contract, including any applicable information from the vendor's proposal dated 11/1/2012, are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</b></p> <p><b>Est. Contract Value: \$869,613.06</b></p> |   |

**FOR THE VENDOR:**

|                                  |
|----------------------------------|
| Firm Name                        |
| Authorized Agent Signature       |
| Authorized Agent (Print or Type) |
| Date                             |

**FOR THE STATE:**

|  |
|--|
| Signature<br><b>Kim Stephens</b>   |
| Name<br><b>Director, Bureau of Budget and Purchasing</b><br><b>Michigan Department of Community Health</b> |
| Title  |
| Date   |

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## 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 RFP.

**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.

**CCI** means Contract Compliance Inspector.

**Days** means calendar days unless otherwise specified.

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

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

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

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

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

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

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

**MDCH** means the Michigan Department of Community Health.

**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 (SOW)**

### **1.010 Project Identification**

#### **1.011 Project Request**

This is a Contract for the State of Michigan, Michigan Department of Community Health, Office of Public Health Preparedness (OPHP) for the functions of the Michigan Health Alert Network (MIHAN) and the MI Volunteer Registry (MI Volunteer) service with an Internet accessible, vendor hosted subscription service.

#### **1.012 Background**

The OPHP, under the MDCH, is charged with protecting the health of Michigan citizens against chemical, biological, nuclear and radiological threats. OPHP focuses on minimizing the threat to health from terrorist acts, accidents and other incidents, and collaborates with local, state and federal authorities to prevent and mitigate threats to the health and safety of Michigan citizens.

#### **Michigan Health Alert Network (MIHAN)**

The United States Centers for Disease Control and Prevention (CDC) awarded grant funding beginning in 2002 to prepare for bio-terrorist attacks and other public health emergencies. One of the critical capacities that funding supported was the establishment of the Michigan Health Alert Network (MIHAN). The MIHAN is a secure, Internet-based notification system used to ensure effective communications and alerting between the CDC, MDCH, public health departments, and healthcare and public safety organizations. The system is Public Health Information Network (PHIN) compliant. Current contact methods include phone, email, text messaging, fax and pager. The MIHAN currently hosts over 3000 participants who function as key points of contact during an incident. In addition the MIHAN features a permissions enabled document library for sharing readiness and response materials. The system is administered by state and regional support members who oversee user accounts, assign function based roles for alerting, and manage document permissions.

#### **MI Volunteer Registry (MI Volunteer)**

The MI Volunteer is a volunteer registration, certification, notification and organization system built and supported with U.S. Department of Health and Human Services (HHS) funds. The system is Emergency System for Advanced Registration of Volunteer Healthcare Professionals (ESAR-VHP) compliant, a standard administered by the Office of the Assistant Secretary for Preparedness and Response (ASPR) at the U.S. Department of Health and Human Services (HHS). ASPR assists each state and territory in establishing a standardized volunteer registration program. All states adhere to national the *ESAR-VHP Guidelines and Compliance Requirements* for developing systems capable of registering a wide range of health care volunteers, verifying their credentials and qualifications, and assigning accepted volunteers to one of four credential levels. The ESAR-VHP system ensures the effective movement of volunteer health personnel in emergencies. There are currently over 6000 volunteers in the system, overseen by state and regional administrators, Volunteers are allowed to request inclusion in a number of volunteer groups. Vetted and accepted volunteers can be filtered by specialty, activated at a state or regional level, and notified of activation by email. The system also hosts a document library, which stores files and is accessible to administrators and volunteers. Lastly, the system offers a badge management module, which site administrators may access to print badges on site.

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

#### **1.021 In Scope**

As outlined below, this project consists of the following scope:

- 1) The Transition and Implementation of each or either the MIHAN or MI Volunteer.
- 2) Training and 24/7/365 Support for the Service/s.
- 3) Subscription Based Pricing.
- 4) Other Services as Required and Contracted.

More complete descriptions of the State and Federal requirements which must be met by the Contractor for these systems are provided in the appendices.



**The subscription service or services must meet these requirements:**

- A secure, web-based Public Health Information Network (PHIN) compliant Health Alert Network service capable of importing the data from the current MIHAN and of supporting its requirements.
- A secure, web-based \ESAR-VHP compliant service capable of importing the data of the current MI Volunteer and of supporting its current requirements.
- Both services must employ a currently functioning vendor hosted service model.
- The service/s must offer annual subscription pricing.
- The service/s must offer training materials and 24/7/365 support services for the respective services being contracted.

**The subscription service or services must not:**

- Offer to completely re-code or recreate either service from scratch.
- Offer a service or services which are not already in existence and in production.
- Offer a service which cannot be customized to display the required graphic and textual elements necessary for the identity and requirements of the related MIHAN or MI Volunteer.
- Require the recollection of data already associated with the current MIHAN and MI Volunteer.

The completed sites must be identifiable as belonging to the State of Michigan and have the State's name and/or logo included on the main page as well as on all subsequent pages. In addition the sites must similarly include the name and logo of the MIHAN or MI Volunteer.

**1.022 Work and Deliverables**

Contractor must provide deliverables/services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in Article 1.

The Contractor shall provide secure, web-based subscription service/s providing either the requirements of the MIHAN and/or the requirements of the MI Volunteer, or providing for both services.

**A. Required Components For Both Services:**

1. The service/s must provide access to either the MIHAN or the MI Volunteer via their current URL addresses respectively:  
MIHAN: <https://MichiganHAN.org>  
MI Volunteer: <https://www.MIVolunteerRegistry.org>
  - Primary URL addresses to be transitioned to the new service/s
  - Secondary URL addresses to also route users to the service/s
2. The service/s must utilize a secure, encrypted HTTPS:\\ connection for accessing all web pages, site functions and for all data exchanges between the server and browser.
  - HTTPS:\\ certificates to be provided by a Trusted Source recognizable to the user's browsers without the need to install a 3<sup>rd</sup> Party Trusted Server.
3. Depending upon the service/s being bid upon, the service/s must be able to provide the requirements of the MIHAN or MI Volunteer and sustain those functions under a usage load commiserate with peak usage according to the current membership of each service.
4. The service/s must have the capability of displaying a required User Agreement which users must accept, either as a one-time occurrence when granted membership or as a reoccurring message during login, to gain access to the service/s functions.
5. The Contractor is to provide 24/7/365 technical support for the service/s, accessible via phone and email at a minimum, with acceptable turnaround times commensurate with the severity of the support call
  - Help Desk support must be available during standard EST business hours, from 8:00 a.m. - 5:00 p.m. EST Monday through Friday, with escalation as necessary to senior staff and to higher and senior level management as required by the issue.
  - All calls for support must be returned within 1 hour with, at a minimum, an explanation of the current issues and of any expected solutions.
  - Bidder must utilize a ticket system for tracking support requests with a web interface accessible to the OPHP for checking the progress of tickets.
6. The service/s must provide better than 99% "Up Time" cumulatively across a service year.
7. The service/s must provide robust, redundant hardware and infrastructure to assure access to the service/s in the event of localized hardware or infrastructure failures.

8. It is desirable that the service/s offer a live test and training environment alongside of the functioning service. This test and training environment will be loaded with mock data and used by OPHP for training and exercise purposes. Services with such capabilities will be given additional weight during the evaluations.
9. Features which allow for the automatic correction of standard issues such as user password resets and empty value reminders are desirable. Services with greater automation for maintenance and administrative tasks will be given additional weight during the evaluations.

## **B. General Transition and Implementation Requirements For Both Services**

1. The transition of the MIHAN and/or the MI Volunteer to the service/s must include a one-time transfer of the existing required graphics, language, database elements, and data into the new service/s. This data includes user information, contact methods, administrator information, permission levels, and any documents contained within the respective document libraries. In addition, in the case of the MI Volunteer this will include data on member affiliations and on background and certification vetting. The Contractor will be required to work with OPHP, to extract the current information, and to migrate that information into the new service/s. Part of the transition process must be the testing of the data for successful migration and acceptance of the migration and sign-off by OPHP.

The migration process for either the MIHAN or MI Volunteer to the appropriate service/s must not interfere with the function of the current system. During the migration the Contractor must provide a test environment to the OPHP for each of the service/s. This environment must be accessible to OPHP for testing new functions, testing the results of the data migration, testing other customizations or functions of the service, and to begin the development of training courses and materials for end users. The test service/s may feature reduced infrastructure levels, i.e. limited phone lines or reduced server power, but must present a working model for all functions.

2. The Contractor must provide robust training support and materials for the service/s implemented. At a minimum the Contractor must offer live training to key OPHP staff after the initial adoption and after any major changes or alterations to the service/s during the life of the contract. Further capabilities for the support of virtual or video training to other OPHP staff, or even to users, would be desirable. The Contractor must provide training documentation and other materials to OPHP for distribution to users. OPHP must be able to adapt these materials as needed for the specifics of how the MIHAN and/or MI Volunteer functions. These or similar materials should also be available for viewing as "help files" on the service/s.
3. Confidential information housed within the service/s must be accessed, controlled and managed only by authorized OPHP staff who are responsible for the data or, if required, by an additional limited group of Contract employees who have been vetted by OPHP, signed State of Michigan confidentiality agreements, and been granted access to the data by OPHP. OPHP staff will require advanced views of this data and tools for access to and for the analysis and manipulation of the data. Implementation of the service/s must include any required training for OPHP staff in the use of these management tools.
4. The Contractor must work to keep the service/s compliant with any related federal standards. The Contractor must work with OPHP, at no additional cost, when asked to assist in the federal certification of the service/s to prove compliance. The Contractor must provide updates to the service/s, as needed and at no additional fee, to maintain compliance.

## **C. Service Specific Requirements**

The service/s must provide, but is not limited to, the following features as part of the subscription offering:

## **MIHAN Requirements**

The MIHAN service must be able to provide access for approximately 4,000 or more registered members/users at any given time. The web-based service will also be accessed by state, regional, and local administrators. Once a participant is registered they will be assigned a unique user ID and password. User records will be associated with and organized by PHIN compliant roles as listed in Appendix B. The service must be able to accommodate multiple levels of access to site information and functions. The service must ensure that information is collected, assembled, maintained and utilized in a manner consistent with all Federal, State and local laws governing security and confidentiality.

### **1. User Accounts and Access**

The service needs to be able to accommodate at least 4,000 MIHAN participants from Michigan's state government departments, local health departments, hospitals, long term care facilities, rural, community and migrant health clinics, life support agencies, tribal health centers, Border States, Ontario and other organizations. Participants must then be organized by role so that a participant only needs to know the job function, not the name, of the individual they wish to alert. In addition user accounts must contain location and professional organization based information, including information related to the user's county and emergency management district as established by the Michigan State Police. The service must allow for members to utilize this information to sort and organize user accounts for alerting and reporting functions.

Each person who participates in the service must be able to specify multiple points of contact for informational alerts and emergency notifications. (I.E. work phone, cell phone, home phone, text pager and work E-mail) Current contact methods are phone, email, SMS, text message, pager, and fax. Services with more methods of contact will be rated higher. The service must prompt users to update their contact information regularly. The service must be able to verify that a user has received and opened alerts, through any alerting method which allows for these capabilities, and record message status and confirmation for later analysis.

The service must be able to accommodate varying levels of user access to site information and functions. There are a minimum of three levels of access required corresponding to Limited, Standard and Administrator access. The actual names of these levels are unimportant. The 'Limited' level must limit a user's access to viewing their user profile, to only receiving alerts, and to accessing any document library files assigned to their account or role/s. The 'Standard' level should add the ability to send alerts, and to add files to the document library into folders which they have permission to access. The 'Administrator' level should further add the ability to modify user information on those user accounts which they manage, role assignments and user permission levels throughout the site. An additional capability, which is desired but not necessary, is to split the "Administrator" permissions into regional and county administrators, with access only over those users assigned to a specific region, and State administrators, with full control over the system.

User accounts must have associated strong passwords and security codes used for confirming a user's identity when this level of security is needed. The State of Michigan's Password policy and guidelines must be followed. In addition all users must be presented with a user agreement created by the State, either when signing up for the service or each time a user logs into the service, which the user must accept in order to use the service.

### **2. Alerts**

The primary function of the service is to allow users to generate and send messages to other site members based on the selection of a user's assigned role/s. Current contact methods include phone, email, SMS, text message, pager and fax. Because the service is meant for sending emergency response related information, it must be possible to push out messages through as many channels as is possible. Users capable of sending alerts must be able to select either a sub-group of users, based on various criteria which must include user roles, or to select all users as recipients.

- a. The service must be able to send email alerts. These emails must be sent to the email addresses associated with each user. The service must be capable of rapidly sending a large number of

email messages within a short period of time. Users must be able to confirm the receipt of these messages and the service must record that confirmation for later analysis and report generation. In addition, the service must also be capable of accepting files, either uploaded or from the document library, as attachments to email messages.

- b. The service must be able to place phone calls to the phone numbers associated with each user using a text to speech engine to generate the alerts. The service must be capable of rapidly sending a large number of calls within a short period of time. (Bidder must communicate their services telephonic abilities in the details of their bid.) The service is expected to read a predetermined introduction to the phone alert and then prompt for a security code. This code should be set by users when they first configure their account and is required before the service reads the content of any alert sent to recipients over the phone. Users must be able to confirm the receipt of these calls and the service must record that confirmation for later analysis.
- c. Other methods for sending alerts are desirable. Services offering more communication methods may be awarded additional weight during evaluation.
- d. The service must generate and store a real-time alerting report each time an alert is sent out. This report must include detailed information including the time sent, the alert's author, content, the users or roles sent to, a record of those users who have confirmed receipt, the percentage of confirmed alerts, and the method and time of each confirmation.

### 3. Document Library

A secondary function of the MIHAN is to store emergency preparedness and response documents in a secure document library. The service must be capable of accepting all standard document and file types and of hosting thousands of such files with a minimum total storage limit of 10GB. In addition it desirable to have the capacity for storing files up to 150MB in size. Systems which can provide these capabilities will receive higher weighting during evaluations. Finally, the service must be capable of organizing these files and documents into useful groupings for ease of access.

Users must be allowed to view and download these documents based on permission levels set by the administrators as assigned to user accounts or roles. Users with Standard level access will be able to upload new documents while Administrators must be able to manage these files and folders and to set permission rights for viewing documents based on settings tied to a user or to a role. This allows administrators to limit the viewing of folder and documents based on a user or role. File and folder management capabilities should also include the creation and deletion of folders, the addition or deletion of files, and the ability to run reports against the document library.

### 4. Administrative Tools

The service must contain a set of administrative and reporting tools. These tools must include these capabilities:

- a. *Management of Portal Content and Settings:* Allow the OPHP administrators to configure values for selection lists, various page and function default settings, alert communications settings such as first contact method used and number of contact attempts, and various other system settings as needed.
- b. *Management of User Information:* Allow the OPHP administrators to access user profile information, to reset passwords and security codes, and to perform other maintenance functions.
- c. *Management of Roles and Groups:* Allow OPHP administrators to review and update user permission levels, group permission levels, and role assignments.
- d. *Management of Reminders:* Allow the OPHP administrators to configure settings dealing with profile and password expiration reminders.
- e. *User Reporting:* Generate various reports on user information including total users, user names, contact methods, associated business, user levels, expired account information, last log-in, and assigned site permissions by OPHP staff.

- f. *Role and Group Reporting*: Generate various reports on role and group information including user site level assignments, user role and group assignments, users not assigned to roles or groups, and role and group based site permissions by OPHP staff.
- g. *Alert Reporting*: Generate various reports on alerts sent including the number and details of alerts sent within a given time period, user and group confirmation levels, and the level of users who did not confirm an alert within a given time period by OPHP staff.
- h. *Document Library Reporting*: Generate various reports on the content of the document library including a list of materials, total and specific file sizes, document age, assigned document permissions, and documents by folder structure (if any) by OPHP staff.
- i. *Ticket Tracking System*: A ticket system accessible to OPHP administrators capable of tracking system maintenance and issue related matters such known bugs, site glitches, service outages, etc.
- j. *Ticket System Reporting*: The ticket system must be capable of generating reports by OPHP Staff that include information such as the status of a given ticket or all tickets, along with notes on the request and the steps that have been taken.
- k. *Quality Assurance Reporting*: OPHP staff should be able to generate and export reports to assist in managing data quality. Reports should include queries that will generate spreadsheets listing users who have never logged, users who have not logged in to the service for over a selected time period, users who need role assignments, and users who don't acknowledge messages when alerted.

These administrative tools will be used as part of an OPHP managed Quality Assurance (QA) program which ensures the integrity of the data and accuracy of the service.

### **MI Volunteer Requirements**

The service must be able to accommodate over 6000 user records from state and local government employees, medical professionals, volunteer organizations, and state citizens. The MI Volunteer service must be compliant with the federal ESAR-VHP standards, including the *Interim ESAR-VHP Technical and Policy Guidelines* in Appendix E, *Standards and Definitions* and the *ESAR-VHP Compliance Requirements* in Appendix D, for a volunteer registration system. The service must ensure that information is collected, assembled, maintained and utilized in a manner consistent with all Federal, State and local laws governing security and confidentiality.

The *ESAR-VHP Compliance Requirements* identify capabilities and procedures that State ESAR-VHP programs must have in place to ensure effective management and inter-jurisdictional movement of volunteer health personnel in emergencies. Each State must meet and maintain all of the Compliance Requirements. There are specific credentials and qualifications that the State must collect through the MI Volunteer for each of the (20) ESAR-VHP identified *healthcare professional occupations*. There are specific verification requirements that the State must adhere to when assigning a volunteer to one of the four credential levels identified in the *Interim ESAR-VHP Technical and Policy Guidelines, Standards and Definitions* (ESAR-VHP credential levels 1-4 located in Appendix E) confirming that a volunteer is clinically active in a hospital setting or medical facility.

1. The MI Volunteer service must be able to:
  - a. Identify volunteers willing to participate in a federally coordinated emergency response
  - b. Be able to query volunteers during initial registration, and during re-verification of credentials, about their willingness to participate in emergency response activities coordinated by the Federal government and be able to record their responses
  - c. If a volunteer responds "Yes" to the federal response activities question above the service must track additional information as needed such as training, physical capabilities, medical status, etc.
  - d. Register and collect the credentials and qualifications of health professionals and verify those credentials with the issuing entity or appropriate authority as identified in the *ESAR-VHP Guidelines*
  - e. Recertify some or all credentials upon request, automatically every 6 months, and before a volunteer activation

- f. Assign volunteers to all four ESAR-VHP credential levels based on their credentials and any qualifications collected and verified through the issuing entity or other appropriate authority
- g. Record all associated health profession related emergency preparedness affiliations for each volunteer including those with any Local , State and Federal government entities
- h. At a minimum identify, collect and verify the credentials and qualifications of the following health professionals
  - Physicians (Allopathic and Osteopathic)
  - Registered Nurses
  - Advanced Practice Registered Nurses (APRNs) including Nurse Practitioners, Certified Nurse Anesthetists, Certified Nurse Midwives, and Clinical Nurse Specialists
  - Pharmacists
  - Psychologists
  - Clinical Social Workers
  - Mental Health Counselors
  - Radiologic Technologists and Technicians
  - Respiratory Therapists
  - Medical and Clinical Laboratory Technologists
  - Medical and Clinical Laboratory Technicians
  - Licensed Practical Nurses and Licensed Vocational Nurses
  - Dentists
  - Marriage and Family Therapists
  - Physician Assistants
  - Veterinarians
  - Cardiovascular Technologists and Technicians
  - Diagnostic Medical Sonographers
  - Emergency Medical Technicians and Paramedics
  - Medical Records and Health Information Technicians
- i. Be able to add additional professions to the list above as they are added in future versions of the *ESAR-VHP Guidelines* or at the request of MDCH or OPHP
- j. Identify and sort volunteers through queries of variables as defined by a requestor, and according to ESAR-VHP requirements, within a prescribed time frame
- k. The service must have the ability to provide complex sorting of volunteer accounts, based on the query of associated data elements, which may be utilized for the creation of customized reports

## 2. User Accounts and Access

The MI Volunteer service must be able to take registration requests from a wide range of both specialized healthcare related volunteers and citizen volunteers. It must be capable of sorting volunteers into predefined groups. It must be capable of allowing OPHP staff to inspect registration requests, verify any necessary volunteer credentials, and to allow for accepting or denying those requests. The service must be capable of performing automated Michigan licensure verification, as well as verification with various national data sources. It must be capable of allowing state, regional and local administrators to sort volunteers based on a number of criteria including skill set. It must be able to allow administrators to send volunteers notifications to activate volunteers, and to ensure their effective deployment during emergencies.

The service needs to be able to accommodate over 6000 user records from state and local government employees, medical professionals, volunteer organizations, and state citizens. The service must be able to then sort these participants into site permission levels, organizations, units, medical and non-medical professionals, as well as by other data points that are collected. User accounts must be associated with various items of information on each user including identity, affiliations, contact information, employer information, criminal background information, medical license information, certifications, skills, trainings, deployment information, availability, medical limitations, and whether the user has been accepted into a volunteer organization/unit based upon the information provided.

Users must be able to submit an application to be a volunteer for one or more organizations and/or units including but not limited to CERT, Fire Corps, General Volunteers, MRC, MIMORT,

MISART, Neighborhood Watch, and VIPS These registrations must be tracked and presented to site administrators for background credentialing and acceptance or rejection. Users must then be notified of their acceptance status for each organization or unit applied to.

The service must accommodate administrative accounts for the following users: OPHP administrators, local administrators, regional administrators, hospital administrators, and volunteers. Volunteers must be able to create and update personal profile information, view mission information when assigned, view information (as appropriate) in the document library, and have the ability to view messages. Local administrators must have the ability to create missions, notifications, and accept or reject responders only within their respective unit. Regional administrators will have the same abilities as local administrators, but with enhanced access for multiple units. Lastly, system administrators must have complete and overall system access.

Each person who participates in the service must be able to specify a primary email for informational alerts and activation notifications. However, the system must also collect and be able to communicate via email, fax, SMS/text, phone, pager, and TTD/TTY. Services with more methods of contact will be rated higher.

User accounts must have associated strong passwords and security codes used for confirming a user's identity when accessing those specific functions of the service which require these levels of security. The State of Michigan's Password policy and guidelines must be followed. The service must prompt users to change their passwords regularly. In addition all users must be presented with a State drafted Terms of Service and Information Pledge, either when initially registering, as well as when changing password.

### 3. Volunteer Credentialing

The MI Volunteer service must accommodate registration of volunteers into one or more organizations, including but not limited to Community Emergency Response Team (CERT), Fire Corps, General Volunteers, Medical Reserve Corps (MRC), Michigan Mortuary Response Team (MIMORT), Michigan State Animal Response Team (MISART), Neighborhood Watch, and Volunteers in Police Service (VIPS). The MI Volunteer must collect information from each user regarding their identity, photo, contact information, employment, professional and personal affiliations, licenses, occupations, skillsets, special training, certifications, medical limitations on duties, deployment information, and credential verification status.

The service is required to integrate with certain state, national, and federal data sources to verify volunteer's medical credential information. Sources include, but are not limited to: American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA), Drug Enforcement Administration (DEA), Office of Inspector General (OIG), Federation of State Medical Boards (FSMB), and the MDCH L2k licensing database. For those sources that are not able to have an electronic verification interface, the system must allow for manual verification. In addition, the system must accommodate criminal background information, which will be updated manually. Credential verification outcomes will be able to be viewed and edited (as necessary) by particular administrators.

### 4. Volunteer Alerting and Activation

The primary function of the service is to register, track and notify volunteers of activation. The service must be able to associate contact information with each user's account and to allow administrators to use that information to send general messages to users and activation alerts to accepted volunteers. Because activation alerts are sent as a response to emergency situations a variety of communication methods are desirable. The service must be able to communicate via email, fax, SMS/text, phone, pager, and TTD/TTY. Services with more methods of contact will be rated higher. In addition, the service must also be capable of accepting files, either uploaded or from the document library, as attachments to email messages.

When sending messages or activation alerts administrators must be able to filter and sort user accounts in a variety of ways including identity, affiliations, contact information, employer

information, criminal background information, medical license information, certifications, skills, trainings, deployment information, availability, medical limitations, and whether the user has been accepted into a volunteer organization/unit based upon the information provided by the user. Filtered accounts must then be presented to an administrator for sorting and selection.

Messages and alerts should include a title and message to be sent. The service should also make a record of all messages sent including information on the sender, the time sent, the content and the recipients. These records should be available for later analysis.

#### 5. Mission Tracking

The service must be able to track and report on mission activations, assigning each at minimum a title, description, and status. The service must be able to track and report on volunteers activated for specific missions. The status for each mission must include at least (3) four stages: pending, active and closed.

#### 6. Document Library

The service must support a document library capable of storing documents and files which may be accessed by users and OPHP staff. The service must be capable of accepting all standard document and file types and of hosting thousands of such files. The service must be capable of organizing these files and documents into useful groupings for ease of access. Users must be allowed to view and download these documents based on permission levels assigned by administrators.

The document library should accommodate most common document and file types. The current total storage limit is set at 10GB and more would be desirable. In addition it desirable to have the capacity for storing files up to 150MB in size. Services which can provide these capabilities will receive higher weighting during evaluations. Finally, the service must be capable of organizing these files and documents into useful groupings for ease of access.

Site members should be presented with those files which their account type, organization, or unit has been granted access to view. Administrators should be presented with all files and folders accessible to their assigned organization or unit and should be able to manage those files and folders. Administrators should have full access to view and manage all file and folders. File and folder management capabilities should include setting user and organization/unit level permissions, the creation and deletion of folders, the addition or deletion of files, and the ability to run reports against the document library.

#### 7. Volunteer Badging

The service must include, or have access to, a module for the creation, management, and printing of volunteer badges. The cost of this module must be included in the total bid. This module must allow administrators to create badges for a subset or all of the accepted volunteers both before activation and on site during activation. The service must allow for the inclusion of barcode elements and photos on the badge. The service must allow for the creation of a file or files containing the content necessary for the printing of the selected badges utilizing standard computers (Windows, Mac or Linux based), common software (i.e. Microsoft Word, Libre Office Writer, Adobe Reader, Internet Explorer, MS Paint, etc.). The Contractor is not required to provide the necessary computers, badge printing software, or printing hardware and materials.

#### 8. Administrative Tools

The service must contain a set of administrative and reporting tools. These tools must include these capabilities:

- a. *Management of Portal Content and Settings*: Allow the OPHP administrators to configure values for selection lists, various page and function default settings, communications



- settings such as first contact method used and number of contact attempts, along with various other system settings as needed.
- b. *Management of User Information:* Allow the administrators to access user profile information, to reset passwords and security codes, set accepted/rejected status, and to perform other maintenance functions.
  - c. *Management of User Groups:* Allow administrators to review and update user permission levels and group assignments.
  - d. *Management of System Reminders:* Allow the administrators to configure settings dealing with profile and password expiration reminders.
  - e. *Management of Volunteer Missions:* Allow the administrators to establish and assign status (pending, active, closed) to volunteer activations, to assign volunteers to these activations, and to track and move volunteers between missions.
  - f. *Management of the Badging Module:* Allow for the customization and control of the elements printed to the badges by OPHP staff including, but not limited to name, photo, graphic, incident, expiration, access level, responder type (medical, non-medical), responder group, and any other useful information associated with user accounts or with an activation.
  - g. *User Reporting:* Generate various reports on user information by OPHP staff including total users, user names, contact methods, medical responder status, certification status, associated specialties and other information, agreement to federal activation, user permission levels, expired account information, and assigned site permissions.
  - h. *User Group Reporting:* Generate various reports on responder type and group information including medical responder grouping, user group assignments, users not assigned to a group, accepted/rejected users, and group based site permissions by OPHP staff.
  - i. *Alert Reporting:* Generate various reports on alerts sent including the number and details of alerts sent within a given time period, and user and group recipients by OPHP staff.
  - j. *Volunteer Mission Reporting:* Generate various reports on activations including activations between specific periods of time, activations by status, and volunteers assigned to activations by OPHP staff.
  - k. *Document Library Reporting:* Generate various reports on the content of the document library including a list of materials, total and specific file sizes, document age, assigned document permissions, and documents by folder structure (if any) by OPHP staff.
  - l. *Badge Reporting:* Generate various reports on the badging module including badges printed, expired badges, active badges per volunteer, and other relevant information by OPHP staff.
  - m. *Ticket Tracking System:* A ticket system accessible to system administrators capable of tracking system maintenance and issue related matters such known bugs, site glitches, service outages, etc. by OPHP staff.
  - n. *Ticket System Reporting:* The ticket system must be capable of generating reports by OPHP staff that include information such as the status of a given ticket or all tickets, along with notes on the request and the steps that have been taken.
  - o. *Quality Assurance Reporting:* OPHP staff should be able to generate and export reports to assist in managing data quality in the service. Reports should include queries that will generate spreadsheets listing users who have never logged, users who have not logged in to the service for over a selected time period, users who need role assignments, and users who don't acknowledge messages when alerted.

These administrative tools will be used as part of an OPHP managed Quality Assurance (QA) program which ensures the integrity of the data and accuracy of the service.

#### **D. Capabilities for Alteration and Update**

These deliverables are not all inclusive. The subscription service/s must have the capability to be updated or enhanced in order to meet new Federal or State requirements. These new requirements will be identified through individual statements of work and will be issued as a contract amendment as is needed.

Federal and State requirements, both technical and functional, are attached to this document. Proposals must take into consideration these additional requirements on their response to this RFP. The following Appendices are included with this RFP:

- Appendix A – Michigan Health Alert Network system documentation  
(Details of the current system's functionality)
- Appendix B – Center for Disease Control (CDC) Standards for Public Health Information Network (PHIN) Compliance (June 22, 2007)  
(Federal PHIN guidelines for MIHAN)
- Appendix C – Average MIHAN Usage by Year
- Appendix D - ESAR-VHP Compliance Requirements (Revised February 2012)  
(Federal compliance requirements for MI Volunteer)
- Appendix E - ESAR-VHP Interim Technical and Policy Guidelines, Standards, and Definitions  
(vs3, 04-19-10)  
(Federal interim guidelines for MI Volunteer)
- Appendix F - Average MI Volunteer Usage by Year

### **1.030 Roles and Responsibilities**

#### **1.031 Contractor Staff, Roles, and Responsibilities**

The Contractor will identify all staff assigned to perform the terms and conditions of the statement of work. The Contractor will include the names, titles, and roles of assigned staff. In addition, the Contractor will identify where the assigned staff will be located and provide contact information including phone numbers.

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

- Manage all defined Contractor responsibilities within the Scope of Services above
- Review all project deliverables and provide feedback
- Develop a project plan and schedule, and update both as needed
- Prepare project documents and materials as needed and provide to OPHP
- Utilize any appropriate change control procedures for alterations to the project
- Serve as the oversight for all project issues
- Report project status and give feedback to OPHP
- Manage and report on the project's budget
- Escalate project risks, issues, and other concerns to OPHP
- Proactively propose/suggest options and alternatives for consideration
- Coordinate and oversee the day-to-day activities of the Contractor's project team
- Manage Contractor's subcontractors, if any

### **1.040 Project Plan**

#### **1.041 Project Plan Management**

Bidder is required to present a project management plan. The plan should identify methods, tools and processes which will be used to oversee the project, to address any issues or changes as they may arise, and to keep the appropriate parties apprised of progress.

##### **A. Performance Review Meetings**

1. The State will require the Contractor to attend meetings yearly to review the Contractor's performance under the Contract.
2. The meetings will be held either in Lansing, Michigan or by teleconference as mutually agreed upon by the State and by the Contractor.
3. The State shall bear no cost for the time, travel, or expenses of the Contractor in attendance of these meetings.

## B. Project Control

1. The Contractor will carry out this project under the direction and control of the MDCH/OPHP.
  - a. The Contractor will use an automated tool for planning, monitoring, and tracking the contract's progress and the work of any Contractor personnel spent performing services under the contract.
  - b. Contractor shall use automated project management tools, as necessary in order to perform the cited Services throughout the life of the contract, which shall include the capability to produce:
    - i. Staffing tables (charts) with the names of personnel assigned to contract tasks.
    - ii. Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next sixty (60) calendar days) with updates made semi-monthly.
    - iii. Updates must include actual time spent on each task and a revised estimated time to completion.
    - iv. Graphs or diagrams showing critical events, dependencies and decision points during the course of the contract.
    - v. Any tool(s) used by the Contractor for such purposes must produce information of a type and format, and produced in such a manner, which will support reporting requirements in compliance with the State's standards to the extent that such standards are described with reasonable detail in the Statement of Work or elsewhere in this RFP.

### **1.042 Reports**

Reporting formats must be submitted to the State's Project Manager for approval within 15 business days after the execution of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract. Changes to reporting formats may be requested by the State or OPHP and will follow the standard guidelines for changes to the project/s.

## **1.050 Acceptance**

### **1.051 Criteria**

The following criteria will be used by the State to determine Acceptance of the Services provided under the statement of work:

#### **A. Implementation:**

- Implementation of a secure web-based subscription service
- Consultation with State personnel who will be working with the services contractor to transfer information from existing databases and including interfaces and data conversion.
- All training manuals, training plans and other documentation provided.

#### **B. Subscription Services**

- HAN Program Service Requirements
- ESAR-VHP Service Requirements

#### **C. Training and 24/7/365 Support Services**

- Help desk support available from 8:00 a.m. - 5:00 p.m. EST, M-F with escalation as necessary to senior staff, and then to higher management and/or senior management.
- Calls for service will be returned within 1 hour.
- Emergency assistance is available 24 hours a day, seven days a week, at no additional cost to the State.
- A Web-enabled help desk interface is provided at no additional cost.
- Training and user manuals

#### **D. Other Services**

The subscription service must have the capability to be enhanced to meet new Federal or State requirements. The new requirements will be identified through individual statements of work and will be issued as needed as a contract amendment.

### **1.052 Final Acceptance**

Final acceptance will occur when the project is completed and functioning according to all of the requirements listed in the state of work.

## **1.060 Proposal Pricing**

### **1.061 Proposal Pricing**

For authorized the Services and Price Lists, see Attachment A. Pricing is to be a yearly subscription charge for all services and fees. Pricing must be all inclusive and contain a fixed cost for all usage fees. (Including domain registrations, certificate costs, telephone charges, etc.) See Appendix C and F for the current, average usage statistics for the MIHAN and MI Volunteer.

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

No travel time or expenses related to travel will be reimbursed. This includes travel costs related to training provided to the State by Contractor.

### **1.062 Price Term**

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

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

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

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

### **1.064 Holdback – Deleted, Not applicable**

## **1.070 Additional Requirements**

### **1.071 Additional Terms and Conditions specific to this RFP**

- A. The Contractor agrees to work cooperatively with the Agency Project Manager.
- B. Under no circumstances will the Contractor represent him or herself as an employee of the OPHP.
- C. The Contractor agrees that he/she will not, at any time either during or after the terms of this agreement, reveal, divulge, or make known to any person, firm or corporation any confidential information whatsoever in connection with OPHP or its consumers. The Contractor may disclose confidential information in accordance with legal requirements.
- D. The Contractor assures that he/she presently has no personal or financial interest and will not acquire any such interest, direct or indirect, which would conflict with any manner of degree with the performance of the services under the agreement. The Contractor further assures that in the

performance of this agreement, no persons having such interest will be employed. The Contractor further assures that no officer, member or employee of the State or no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this agreement, has any personal or financial interest, direct or indirect, in this agreement or in the proceeds thereof.

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

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

#### **2.001 Contract Term**

The Contract is for a period of three (3) years beginning 01/01/2013 through 12/31/2015. 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 Michigan Department of Community Health, Grants & Purchasing Division and the Office of Public Health Preparedness (collectively, including all other relevant State of Michigan departments and agencies, the "State"). MDCH Grants & Purchasing is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. MDCH Grants & Purchasing **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 MDCH for the Contract is:

Barbara Bidigare  
Special Projects/ASPR Grant Coordinator  
MDCH Office of Public Health Preparedness  
201 Townsend  
Lansing MI 48913  
Phone: 517-335-9026  
Fax: 517-335-8392  
Email: [bidigareb3@michigan.gov](mailto:bidigareb3@michigan.gov)

### **2.022 Contract Compliance Inspector**

After MDCH Grants & Purchasing Division receives the properly executed Contract, it is anticipated that the Director of MDCH Grants & Purchasing Division, in consultation with OPHP, 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 MDCH Grants & Purchasing Division.** The CCI for the Contract is:

Gregory Rivet, Manager  
MDCH Grants and Purchasing Division  
320 South Walnut Street  
Lansing, MI 48813

Email: rivetg@michigan.gov  
Phone: 517-335-5096  
Fax: (517) 241-2252

### **2.023 Project Manager**

The following individuals will oversee the project:

Virginia Zimmerman, MI Volunteer Coordinator  
MDCH, OPHP  
201 Townsend, Lansing, MI 48913  
zimmermanv@michigan.gov  
517-335-8268

and

Craig Henry, MIHAN Coordinator  
MDCH, OPHP  
201 Townsend, Lansing, MI 48913  
henryc1@michigan.gov  
517-335-8279

### **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-Procurement.
- (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 ninety (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**

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

#### **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 RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that The Contractor 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.

(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 Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (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 ten (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-Procurement 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/dmb/0,4568,7-150-56355\\_56579\\_56755---.00.html](http://www.michigan.gov/dmb/0,4568,7-150-56355_56579_56755---.00.html). 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 ten (10) days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

## **2.093 PCI Data Security Standard – Deleted as Not Applicable**

### **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 ten (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 ten (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 twenty (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 thirty (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-Procurement.

### **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 Equipment Warranty**

To the extent Contractor is responsible under the Contract for maintaining equipment/system(s), Contractor must maintain the equipment/system(s) in good operating condition and must undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in the Contract.

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

Within (5) five business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

The Contractor agrees that all warranty service it provides under the Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

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

### **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 DTMB-Procurement 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 INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- 2. If a motor vehicle is used to provide services or products under 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 INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided 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-Procurement, 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 thirty (30) days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement,

DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than twenty (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 thirty (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 ten (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 thirty (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 thirty (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 thirty (30) days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in 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 (60) sixty 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 thirty (30) calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment 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 Procurement, 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 sixty (60) calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within thirty (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 Licensing and Regulatory Affairs, Wage and Hour Division, 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 Licensing and Regulatory Affairs, 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.

### **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 thirty (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 thirty (30) days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
- (2) Contractor must also notify DTMB Procurement within thirty (30) days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DTMB Procurement within thirty (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, if caller inquires. 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 Service Level Agreements (SLAs) – Deleted, Not Applicable**

### **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 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 \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns 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 thirty (30) days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the thirty (30) day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide thirty (30) days of shadowing must not exceed \$50,000.00 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 ten (10) Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State 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 Approval of Deliverables - Reserved**

#### **2.251 Delivery Responsibilities**

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

(a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.

(b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

### **2.252 Delivery of Deliverables**

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

### **2.253 Testing**

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

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

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

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

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

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of



the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

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

(e) If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

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

### **2.255 Process for Approval of Written Deliverables**

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

### **2.256 Process for Approval of Services**

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

original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

### **2.257 Process for Approval of Physical Deliverables**

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

### **2.258 Final Acceptance**

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

## **2.260 Ownership**

### **2.261 Ownership of Work Product by State- Deleted/Not Applicable**

### **2.262 Vesting of Rights- Deleted/Not Applicable**

### **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/dmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://www.michigan.gov/dmb/0,4568,7-150-56355_56579_56755---,00.html).

### **2.272 Acceptable Use Policy**

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

### **2.273 Systems Changes**

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

#### **2.280 Extended Purchasing**

### **2.281 MIDEAL - Deleted/Not Applicable**

### **2.282 State Employee Purchases- Deleted/Not Applicable**

#### **2.290 Environmental Provision**

### **2.291 Environmental Provision**

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials 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: Price**

| <b>No.</b> | <b>Combined Subscription Cost(s)</b>       | <b>3 year Pricing</b>       |
|------------|--|-----------------------------|
| 1.         | -MI Health Alert Network<br>-Telco Charges | \$889,527.00<br>\$25,500.00 |
| 2.         | MI Volunteer                               | \$174,042.00                |
| 3.         | 5-Product Suite of Solutions 22% Discount  | \$-219,455.94               |
|            | <b>Total Subscription Cost(s)</b>          | <b>\$869,613.06</b>         |

## **Appendix A – Health Alert Network Specific PHIN Requirements**

### Alerting and Secure Partner Communication – Section 2.1

| PHIN Requirement Cross Reference Number | Requirement Description  | CDC Required Validation Method |
|---|--|--------------------------------|
| 2.1.1.1                                 | Do systems supporting the HAN have the ability to send, receive, manage, and disseminate communications and alerts to participants in public health?   | User demo                      |
| 2.1.1.2.a                               | Is direct alerting always used when communications or alerts are distributed within a single jurisdiction?   | User demo                      |
| 2.1.1.2.b                               | Is either direct or cascade alerting, or both used when communications or alerts must be sent across jurisdictional boundaries?  | User demo                      |
| 2.1.1.3                                 | Are public health partners able to send communications and alerts using direct alerting?   | User demo                      |
| 2.1.1.4                                 | Are public health partners able to send communications and alerts to and receive communications and alerts from jurisdictions other than their own?  | User demo                      |
| 2.1.1.5                                 | Does the HAN service accept and register the confirmation of receipt that indicates a human user has received and acknowledged the communication or alert?   | User demo                      |
| 2.1.1.6                                 | Can the initiating alerting systems identify which organizations or jurisdictions can receive cascade alerts? - If a jurisdiction or organization has been certified as meeting key performance measures for receiving and processing cascade alerts, then the initiator will use cascade alerting. - If a jurisdiction or organization does not have the ability to receive and process cascade alerts, the initiator will use direct alerting.   | User demo                      |
| 2.1.1.7                                 | Does the HAN service provide the ability for jurisdictions to append jurisdictionally specific information to original communications or alerts as long as the message delivery time requirements are met?<br><br>- Jurisdictions may not alter the content of an original communications or alert, but may append new content to clarify jurisdictional action<br><br>- Jurisdictions may delete contact information included in an original communication or alert and substitute contact information relevant within the receiving jurisdiction | User demo                      |
| 2.1.1.8                                 | Do communications and alerts support an audit trail for edits or alterations? - Communications and alerts that are edited or altered for jurisdictional clarification must be appended to the end of the original communications or alert - When an original communication or alert is edited or altered, the editing jurisdiction's unique agency identifier must be appended to the original communication or alert after the originator's unique agency identifier  | User demo                      |
| 2.1.1.9                                 | Do the alerting systems generate a real-time delivery status report that contains the number of recipients targeted to receive a communication or alert and the number of recipients who have confirmed receipt?   | User demo                      |
| 2.1.1.10                                | Is the HAN service able to securely archive communications and alerts that they send (e.g., initiate, forward, cascade)?   | User demo                      |
| 2.1.1.11                                | Is the HAN service able to securely retrieve, reconstruct, and resend archived communications and alerts that they previously sent (e.g.,  | User demo                      |

|           |  |           |
|-----------|--|-----------|
|           | initiated, forwarded, cascaded)?   |           |
| 2.1.2.1   | Does the HAN service provide a means of secure public health partner communication?  | User demo |
| 2.1.2.2   | Does the HAN service use a secure website (one that meets certification requirements) to satisfy secure delivery of sensitive information? - Epi-X is one example of a secure website that partners may use. Epi-X is not required as long as the partner has other means of providing secure communication. | User demo |
| 2.1.2.3   | Does the HAN service, through secure communications, support the ability for authorized users to post and receive content and to facilitate broader collaboration functions?   | User demo |
| 2.1.2.4   | Does the HAN service provide secure transport and restricted access and distribution for sensitive communications and alerts?  | User demo |
| 2.1.2.4.a | As long as the notification itself does not contain sensitive content, can the notification of content delivery in a secure channel be sent over non-secure means when notification of sensitive communications or alerts cannot be sent using secure channels of communication?                             | User demo |
| 2.1.2.4.b | When notification of delivery is sent using non-secure channels of communication, does the notification include a reference to a secure website where the sensitive information is accessible to authenticated users?  | User demo |
| 2.1.2.4.c | Before delivering sensitive information, is the HAN service able to authenticate the identity of a user?   | User demo |
| 2.1.2.5   | Does the HAN service implement a secure encryption technology, such as Secure Sockets Layer (SSL) for secure web presentation over the Internet?   | User demo |
| 2.1.2.6   | Are systems supporting the HAN service able to recognize secure versus non-secure channels of transmission?  | User demo |

#### Alert Format - Section 2.2

| PHIN Requirement Cross Reference Number | Requirement Description  | CDC Required Validation Method |
|---|--|--------------------------------|
| 2.2.1                                   | Does each communication or alert address a single issue rather than combining multiple issues in one communication or alert?   | User Demo                      |
| 2.2.2                                   | To support downward compatibility for devices that do not support graphics, is the content of an communication or alert translatable and sharable in simple text format (e.g., Blackberry, pager, telephone)?  | User Demo                      |
| 2.2.3                                   | Do all communications and alerts contain <ul style="list-style-type: none"> <li>- a unique message identifier</li> <li>- a human readable unique originating agency identifier</li> <li>- an indication of sensitivity</li> <li>- an indication of severity</li> <li>- an indication whether acknowledgement is required</li> <li>- a succinct title?</li> </ul> | User Demo                      |
| 2.2.3.1                                 | Does the unique agency identifier adhere to a specified format that recipients can interpret upon reading?   | User Demo                      |
| 2.2.4                                   | For health alerts specifically, is a specified, pre-defined unique message identifier format used?   | User Demo                      |

|       |   |           |
|-------|---|-----------|
| 2.2.5 | <p>Do communications and alerts optionally include the following information?</p> <ul style="list-style-type: none"> <li>- Issuing date and time</li> <li>- Delivery time</li> <li>- Intended audience</li> <li>- Name, title and contact information of the issuing partner</li> <li>- Required actions</li> <li>- Instructions for sharing the information</li> <li>- Public Health Agency's emergency contact information</li> <li>- Estimated time for follow-up</li> <li>- Page numbers (if multiple pages)</li> <li>- Approved content</li> </ul> | User Demo |
|-------|---|-----------|

### Vocabulary Standards - Section 2.3

| PHIN Requirement Cross Reference Number | Requirement Description   | CDC Required Validation Method |
|---|---|--------------------------------|
| 2.3.1.1                                 | Do partner communications, direct messages, and cascade alerts support and use the defined vocabulary structure defined in this section for the specific data elements and valid value sets?  | User demo                      |
| Severity - Section 2.3.2                |   |                                |
| 2.3.2.1                                 | <p>Does the HAN service include a "Severity" attribute to describe the level of significance of the communication or alert to recipients?</p> <ul style="list-style-type: none"> <li>- Extreme</li> <li>- Severe</li> <li>- Moderate</li> <li>- Minor</li> <li>- Unknown</li> </ul>   | User demo                      |
| 2.3.2.2                                 | If the HAN service currently uses existing scale to indicate the significance of a communication or alert, is the solution able to map the existing values to those listed in requirement 2.3.2.1?  | User demo                      |
| 2.3.2.2.a                               | Is the "severity" value appropriate to the significance of a communication or alert included as a required attribute in all communications and alerts?  | User demo                      |
| 2.3.2.2.b                               | Are mapped, existing values included in the communications and alerts as optional content?  | User demo                      |
| Delivery Time - Section 2.3.3           |   |                                |
| 2.3.3.1                                 | <p>Are alerting systems supporting the HAN service able to support a "Delivery Time" attribute used to indicate how quickly the communication or alert must be delivered to recipient (and acknowledged, when acknowledgement is required)?</p> <ul style="list-style-type: none"> <li>- Within 15 minutes - no more than 15 min should elapse</li> <li>- Within 60 minutes - no more than 60 min should elapse</li> <li>- Within 24 hours - no more than 24 hours should elapse</li> <li>- Within 72 hours - no more than</li> </ul> | User demo                      |



|                                      |   |           |
|--------------------------------------|---|-----------|
|                                      | 72 hours should elapse  |           |
| Acknowledge - Section 2.3.4          |   |           |
| 2.3.4.1                              | <p>Does the HAN service use an "Acknowledge" attribute to indicate whether a return receipt is required as a means for the recipient to confirm the communication or alert was received?</p> <ul style="list-style-type: none"> <li>- Yes - requires a return receipt from the recipient</li> <li>- No - return receipt from the recipient is not required</li> </ul> | User demo |
| 2.3.4.2                              | When the "Acknowledge" attribute has a "Yes" value, are all defined contact methods for each recipient fully exhausted in an attempt to collect a return receipt?   | User demo |
| 2.3.4.3                              | When the "Acknowledge" attribute has a "Yes" value, do HAN services attempt delivery of communications or alerts to each recipient until the recipient personally confirms receipt?   | User demo |
| 2.3.4.4                              | When the "Acknowledge" attribute has a "Yes" value, do HAN services attempt delivery using the sequential contact methods specified in each user's communication profile and/or alternate contacts for the recipient until the recipient personally confirms receipt of the communication or alert?   | User demo |
| Jurisdiction - Section 2.3.5         |   |           |
| 2.3.5.1                              | <p>Does the HAN service use an attribute for "Jurisdiction" to indicate the targeted recipients of the communication/alert?</p> <ul style="list-style-type: none"> <li>- FIPS codes will be used to indicate the targeted jurisdiction</li> </ul>   | User demo |
| Jurisdictional Level - Section 2.3.6 |   |           |
| 2.3.6.1                              | <p>Does the HAN service use an attribute to indicate the targeted recipients' jurisdictional level?</p> <ul style="list-style-type: none"> <li>- National</li> <li>- State</li> <li>- Territorial</li> <li>- Local</li> </ul>   | User demo |
| Role - Section 2.3.7                 |   |           |
| 2.3.7.1                              | If a communication or alert is directed by recipients' roles, does the HAN service have the ability to include one or more "Role" attributes to describe the public health functions for which a person is responsible?   | User demo |
| Sensitive - Section 2.3.8            |   |           |
| 2.3.8.1                              | <p>Does the HAN service include a "Sensitive" attribute to indicate whether a communication or alert contains sensitive or non-sensitive content?</p> <ul style="list-style-type: none"> <li>- Yes - sensitive content included</li> <li>- No - non-sensitive content is included</li> </ul>  | User demo |
| Status - Section 2.3.9               |   |           |
| 2.3.9.1                              | <p>Does the HAN service include a "Status" attribute to indicate whether a communication or alert is related to a true event or to a test scenario?</p> <ul style="list-style-type: none"> <li>- Actual - indicates that the</li> </ul>   |           |

|                                      |   |  |
|--------------------------------------|---|--|
|                                      | <p>communication or alert refers to a live event</p> <ul style="list-style-type: none"> <li>- Exercise - indicates that designated recipients must respond to the communication or alert</li> <li>- Test - indicates that the communication or alert is related to a technical, system test and should be disregarded</li> </ul>  |  |
| <b>Message Type - Section 2.3.10</b> |   |  |
| 2.3.10.1                             | <p>Does the HAN service include a "Message Type" attribute to categorize the communication or alert?</p> <ul style="list-style-type: none"> <li>- Alert - indicates an original communication or alert</li> <li>- Update - indicates prior communication or alert has been updated and superseded</li> <li>- Cancel - indicates prior communication or alert has been cancelled</li> <li>- Error - indicates prior communication or alert has been retracted</li> </ul> |  |

**Recipient Addressing - Section 2.4**

| PHIN Requirement Cross Reference Number | Requirement Description   | CDC Required Validation Method |
|---|---|--------------------------------|
| 2.4.1.1                                 | Can communications and alerts be directed either to a list of specific people or to a combination of parameter values including role, organization, organization type, jurisdiction level or to some combination?   | User demo                      |
| 2.4.2                                   | Are systems supporting HAN able to direct communications and alerts to appropriate, targeted audiences based on the following? <ul style="list-style-type: none"> <li>- the nature of the event,</li> <li>- the delivery time,</li> <li>- type of response required,</li> <li>- jurisdiction affected,</li> <li>- severity of the event,</li> <li>- sensitivity of the information?</li> </ul>                        | User demo                      |
| 2.4.2.1                                 | Is the HAN service able to target and process a single communication or alert using different delivery times and/or acknowledge requirements for different recipients?<br><br>(e.g., Delivery Time attribute is "60 minutes" and Acknowledge attribute is "Yes" for some audiences; other audiences receive the same alert with Delivery Time attribute value of "24 hours" and Acknowledge attribute value of "No".) | User demo                      |
| 2.4.3                                   | Do alerting systems ensure timely and comprehensive delivery to all required recipients while simultaneously minimizing communications and alerts that may be perceived as redundant or unnecessary?  | User demo                      |

**Alerting Across Jurisdictions - Section 2.5**

| PHIN Requirement Cross Reference Number       | Requirement Description  | CDC Required Validation Method |
|---|--|--------------------------------|
| Cross-Jurisdictional Alerting - Section 2.5.1 |  |                                |
| 2.5.1.1                                       | Depending on the nature of the content, when a communication or alert is sent across state lines, does the initiating jurisdiction also notify national health partners?<br>- Communications and alerts that are interstate in nature warrant national level attention.  | User demo                      |
| 2.5.1.2                                       | Is a notification tree that illustrates all node-to-parent relationships available to all partners either on the public health partner website or available by other means?  | Screen Print; User Manual      |
| 2.5.1.3                                       | When communications or alerts are sent to recipients such as front-line responders or sub-jurisdictions is the parent of the node also notified?   | User demo                      |
| Cascade Alerting - Section 2.5.2              |  |                                |
| 2.5.2.1                                       | Are cascade communications and alerts transmitted via a secure transport protocol using an EDXL implementation that is compatible with PHIN Messaging Services (PHIN MS)?<br><br>Note: Required only for systems that are cascade capable.   | User demo                      |
| 2.5.2.2                                       | Network performance notwithstanding, within 5 minutes of the end of transmission, does your HAN service transmit an acknowledgement back to the initiating system?<br><br>Note: Required only for systems that are cascade capable.  | User demo                      |
| 2.5.2.3                                       | For communications and alerts with the Delivery Time attribute of "within 15 minutes" or "within 60 minutes" does your HAN service have the ability to transmit a delivery status report to the initiating system every 10 minutes, starting from the time of receipt of the cascade communication or alert and until the delivery is substantially complete? The report should include the following:<br><br>- Unique message identifier<br>- Number of recipients targeted to receive the communication or alert<br>- Number of recipients who have confirmed receipt<br><br>Note: Required only for systems that are cascade capable. | User demo                      |
| 2.5.2.4                                       | If a cascade alerting recipient system does not respond to the initiating system, is your HAN service able to use direct alerting methods to disseminate the communication or alert?<br><br>See 2.5.2.2 for more information about non-response.   | User demo                      |
| 2.5.2.5                                       | For communications/alerts with the Delivery Time attribute value of "within 24 hours" or "within 72 hours" does your HAN service have the ability to transmit an acknowledgement to the initiating system within one hour of commencement of normal business hours following receipt of the complete communication or alert?<br><br>- Unique message identifier  | User demo                      |

|  |   |  |
|--|---|--|
|  | <ul style="list-style-type: none"> <li>- Number of recipients targeted to receive the communication or alert</li> <li>- Number to whom delivery has been made</li> </ul> <p>Note: Required only for systems that are cascade capable.</p> |  |
|--|---|--|

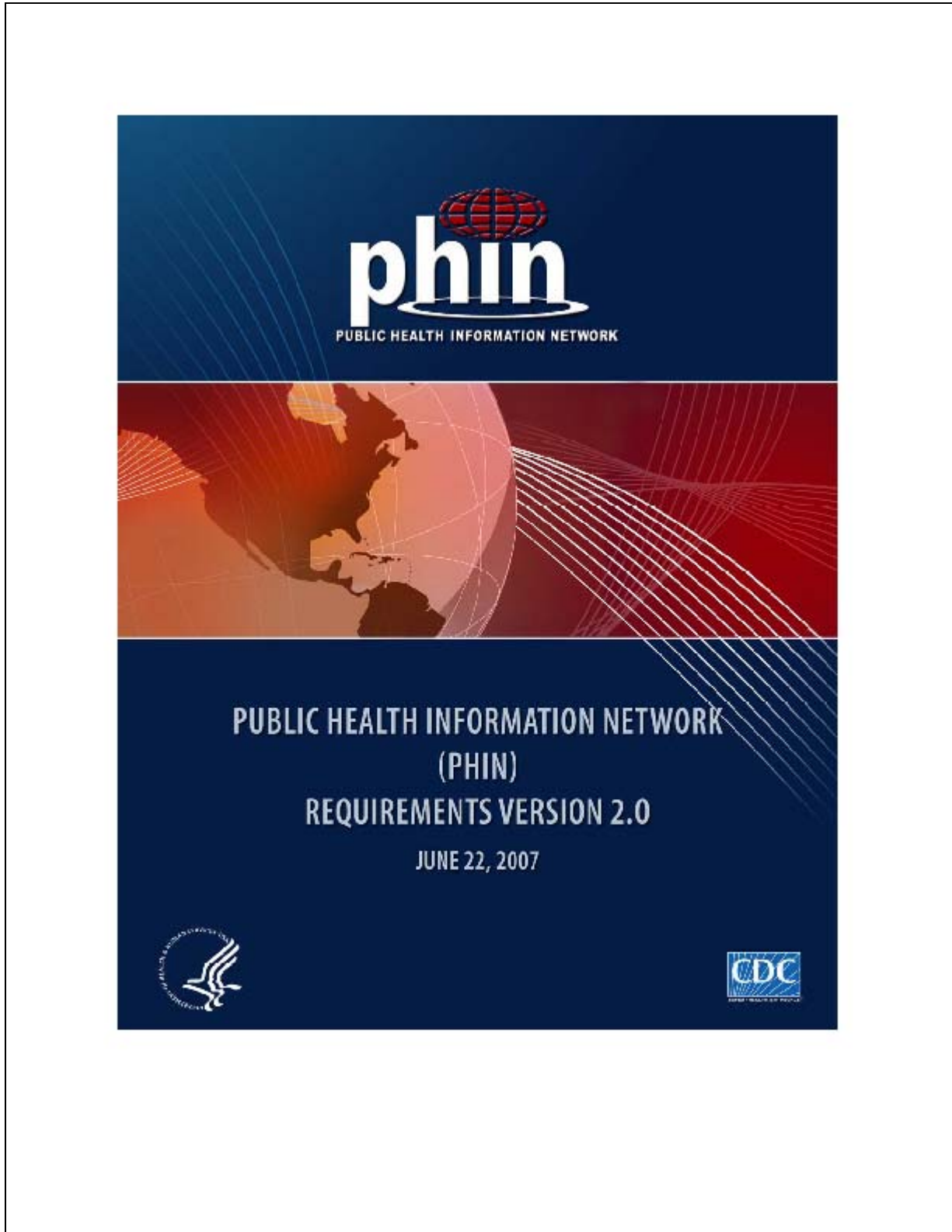
### System Integration and Data Exchange - Section 2.6

| PHIN Requirement Cross Reference Number | Requirement Description  | CDC Required Validation Method |
|---|--|--------------------------------|
| 2.6.1.2                                 | For organizations and persons involved in public health, does a local instance of the public health directory contain contact information, roles, jurisdictions, and communications devices?   | User Demo                      |
| 2.6.1.2.a                               | To support data exchange, does a local instance of a public health directory map to the PHIN directory exchange schema v2.0?   | User Demo                      |
| 2.6.1.2.b                               | Does a local instance of a public health directory support people having multiple roles?   | User Demo                      |
| 2.6.1.3                                 | Does the HAN service integrate with a local instance of a public health directory as a repository of people, roles, organizations, organization types and jurisdictions?   | User Demo                      |
| 2.6.1.4                                 | Does the directory accessed by HAN service provide specific attributes, or mapable equivalents, for persons who will be directly alerted?  | User Demo                      |
| 2.6.1.5                                 | Does the integrated directory encompass all groups included in the organization's or jurisdiction's response plans?<br><br>- Frontline responders include:<br>clinical care personnel,<br>emergency rooms,<br>paramedics, fire departments,<br>law enforcement, etc. | User Demo                      |
| 2.6.1.6                                 | Do the local instances of a public health directory supporting partner communication allow for queries of person by name, role, organization, organization type and jurisdiction?  | User Demo                      |
| 2.6.1.7                                 | Are communication profiles defined to prioritize the list of communication devices that may be used to contact a recipient?  | User Demo                      |
| 2.6.1.7.a                               | Is the preferred sequential priority of each communication device identified in a recipient's profile?   | User Demo                      |
| 2.6.1.7.b                               | Does each device in a recipient's communication profile indicate whether it can be accessed during normal business hours or after normal business hours (e.g., work phone number is usually only available during normal business hours).                            | User Demo                      |
| 2.6.1.8                                 | Do recipients who are required to receive communications and alerts with a delivery attribute value of "within 15 minutes", "within  | User Demo                      |

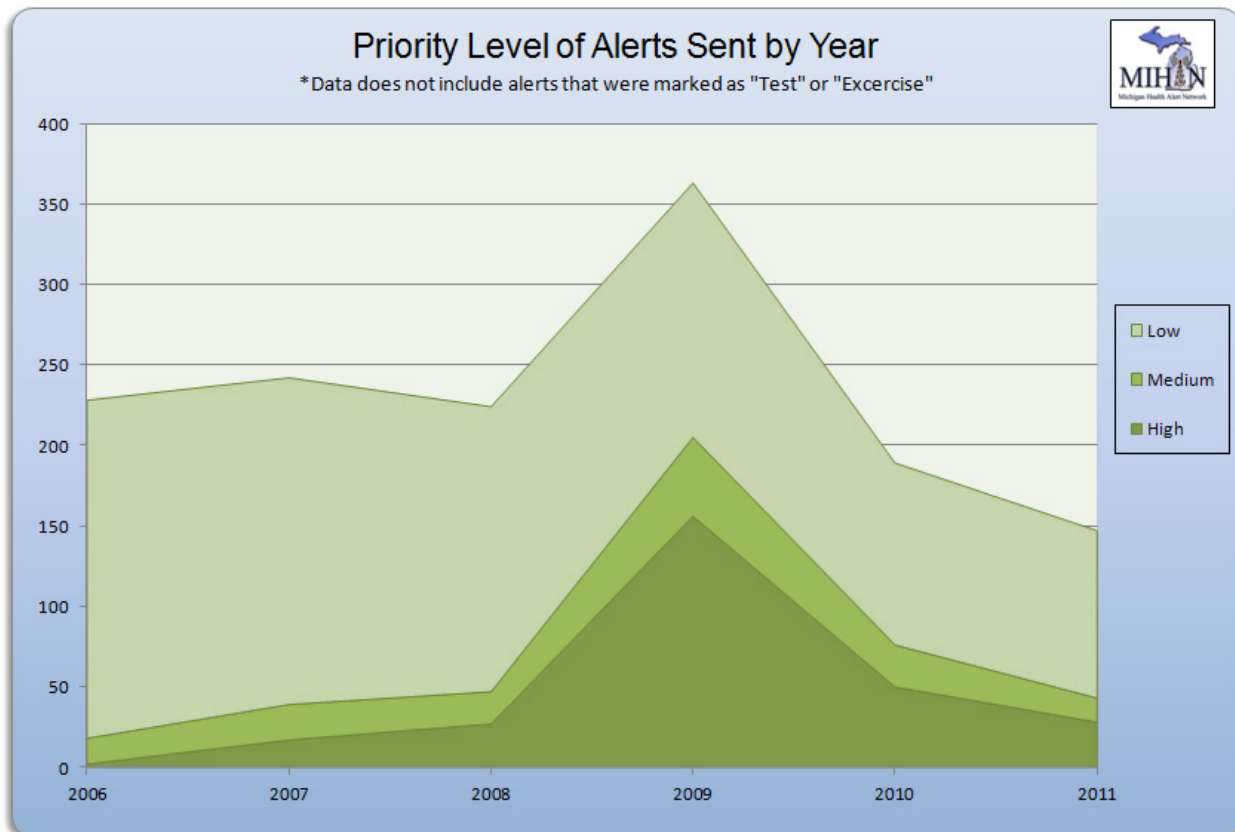
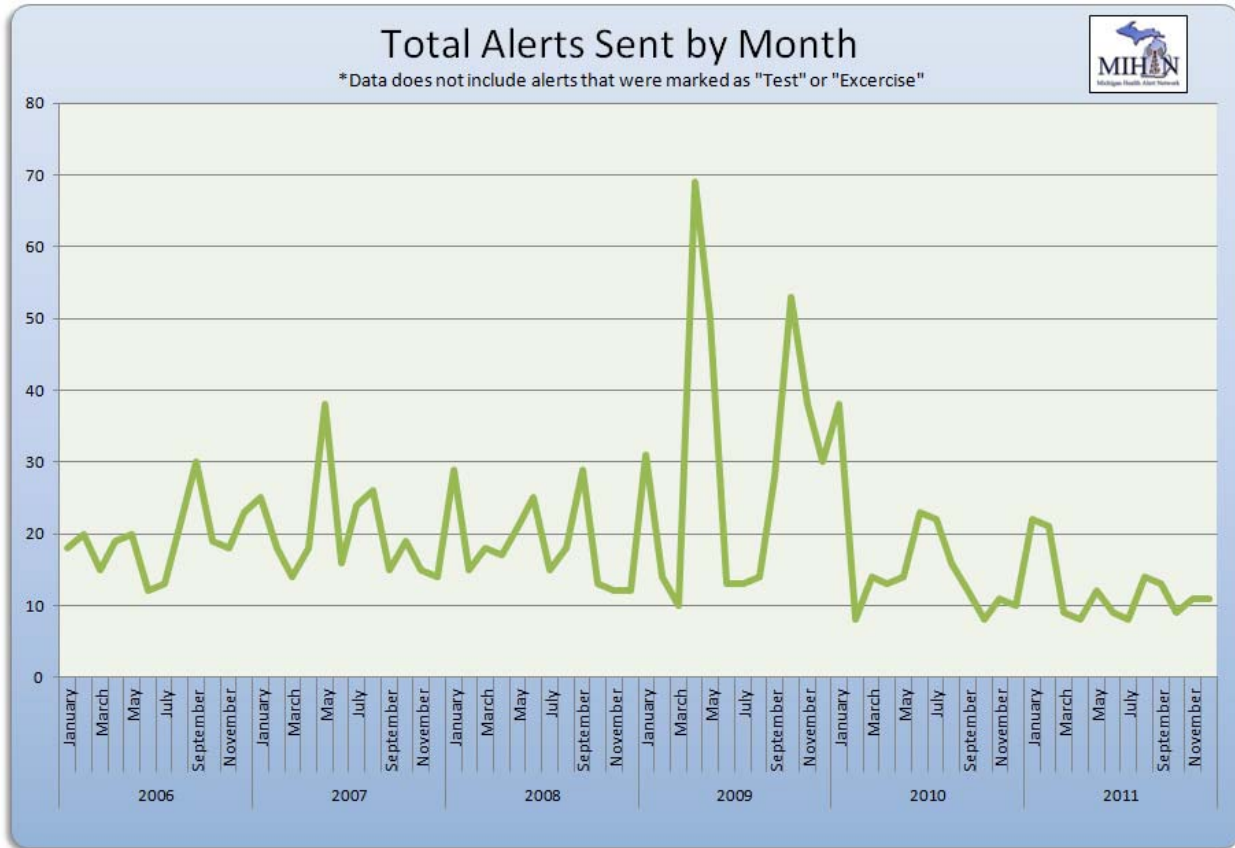
|   |   |           |
|---|---|-----------|
|   | 60 minutes" or "within 24 hours" have access to one or more communication devices so that they may be reached on a 24/7/365 basis?                          |           |
| 2.6.1.9   | Is the HAN service able to contact all device types listed in recipients' profiles?   | User Demo |
| PHIN Common Alerting Protocol Integration - Section 2.6.2 |   |           |
| 2.6.2.1   | Does the HAN service use the PHIN specification of the Common Alerting Protocol (CAP) to send and/or receive cascade communications and alerts?             | User Demo |
| 2.6.2.1.a   | Is the cascading system able to parse and act upon the cascade communication or alert parameters from the CAP format as adopted by PHIN?                    | User Demo |
| 2.6.2.1.b   | Are alerting systems able to process the received communication or alert parameter in accordance with PHIN Communication and Alerting Implementation Guide? | User Demo |

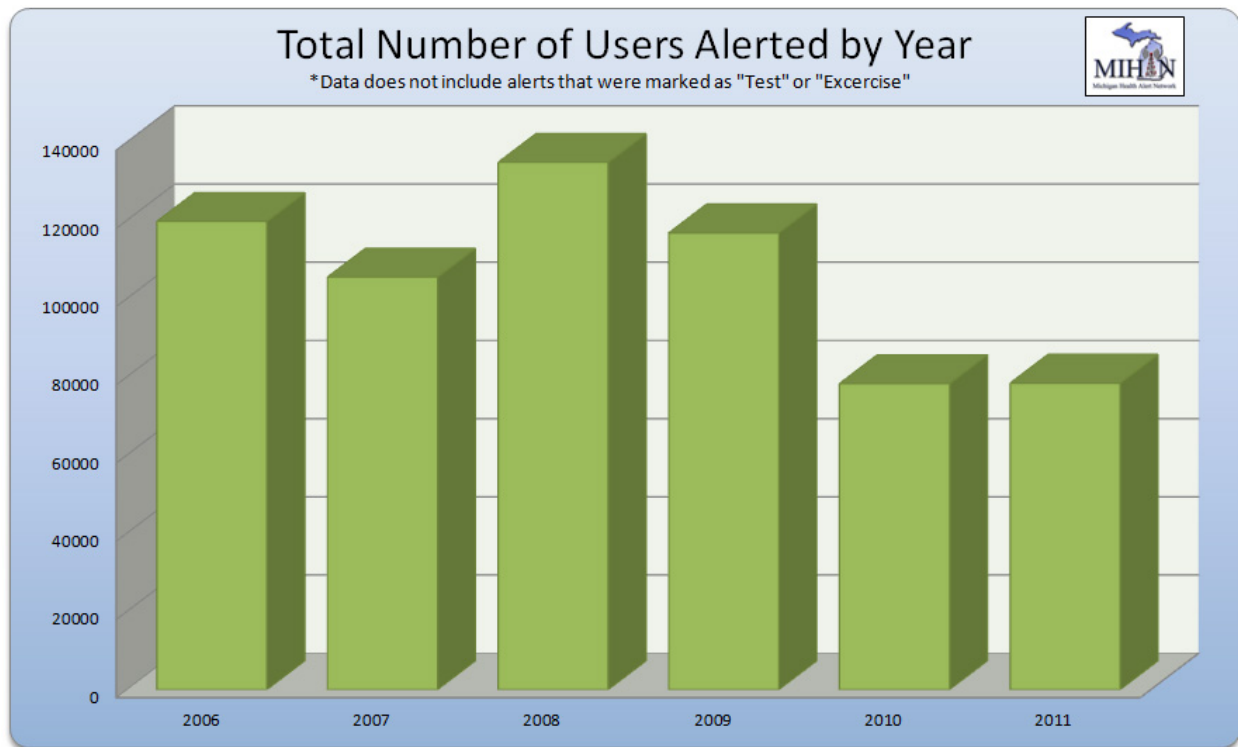
**Appendix B –Center for Disease Control (CDC) Standards for Public Health Information Network (PHIN) Compliance (June 22, 2007)**

*Double Click embedded PDF below to access:*



**Appendix C - Average MIHAN Usage by Year (2006 – 2011)**





Total Registered Users: 3,854

*Double click spreadsheet to access:*

#### ACTUAL ALERTS FOR 2009

| Month             | # of Users    | # of Roles   | # Alerts Sent | # Emails     | Est. # Calls | Avg. Minutes   |
|-------------------|---------------|--------------|---------------|--------------|--------------|----------------|
| January           | 16476         | 9000         | 31            | 9000         | 5400         | 8100           |
| February          | 4983          | 3031         | 14            | 3031         | 1818         | 2727           |
| March             | 3181          | 1758         | 10            | 1758         | 1054         | 1581           |
| April             | 29217         | 18185        | 69            | 18185        | 10911        | 16366.5        |
| May               | 14655         | 8938         | 50            | 8938         | 5362         | 8043           |
| June              | 5842          | 3760         | 13            | 3760         | 2256         | 3384           |
| July              | 7516          | 4441         | 13            | 4441         | 2664         | 3996           |
| August            | 7413          | 4196         | 14            | 4196         | 2517         | 3775.5         |
| September         | 1304          | 162          | 28            | 162          | 97           | 145.5          |
| October           | 4363          | 1720         | 53            | 1720         | 1032         | 1548           |
| November          | 13220         | 6405         | 38            | 6405         | 3843         | 5764.5         |
| December          | 8674          | 3961         | 30            | 3961         | 4753         | 7129.5         |
| <b>2009 TOTAL</b> | <b>116844</b> | <b>65557</b> | <b>363</b>    | <b>65557</b> | <b>41707</b> | <b>62560.5</b> |

#### ACTUAL ALERTS FOR 2010



## Appendix D - Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) Compliance Requirements (Revised February 2012)

The ESAR-VHP compliance requirements identify capabilities and procedures that state<sup>1</sup> ESAR-VHP programs must have in place to ensure effective management and inter-jurisdictional movement of volunteer health personnel in emergencies. Each state must meet all of the compliance requirements.

### ESAR-VHP Electronic System Requirements

1. Each state is required to develop an electronic registration system for recording and managing volunteer information based on the data definitions presented in the ESAR-VHP *Interim Technical and Policy Guidelines, Standards and Definitions (Guidelines)*.

These systems must:

- a. Offer Internet-based registration. Information must be controlled and managed by authorized personnel who are responsible for the data.
  - b. Ensure that volunteer information is collected, assembled, maintained and utilized in a manner consistent with all federal, state, and local laws governing security and confidentiality.
  - c. Identify volunteers via queries of variables as defined by the requester.
  - d. Ensure that each state ESAR-VHP system is both backed up on a regular basis and that the backup is not co-located.
2. Each electronic system must be able to register and collect the credentials and qualifications of health professionals that are then verified with the issuing entity or appropriate authority identified in the ESAR-VHP *Guidelines*.
    - a. Each state must collect and verify the credentials and qualifications of the following health professional occupations. Beyond this list of occupations, a state may register volunteers from any other occupation it chooses. The standards and requirements for including additional occupations are left to the states.
      - 1) Physicians (allopathic and osteopathic)
      - 2) Registered nurses
      - 3) Advanced practice registered nurses (APRNs) including nurse practitioners, certified nurse anesthetists, certified nurse-midwives, and clinical nurse specialists
      - 4) Pharmacists
      - 5) Psychologists
      - 6) Clinical social workers
      - 7) Mental health counselors
      - 8) Radiologic technologists and technicians
      - 9) Respiratory therapists

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<sup>1</sup> For purpose of this document, state refers to the 50 states, the District of Columbia, the three metropolitan areas of Chicago, New York City, Los Angeles County, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the territories of American Samoa, Guam and the United States Virgin Islands, the Federated States of Micronesia, and the Republics of Palau and the Marshall Islands.

- 10) Medical and clinical laboratory technologists
- 11) Medical and clinical laboratory technicians
- 12) Licensed practical nurses and licensed vocational nurses
- 13) Dentists
- 14) Marriage and family therapists
- 15) Physician assistants
- 16) Veterinarians
- 17) Cardiovascular technologists and technicians
- 18) Diagnostic medical sonographers
- 19) Emergency medical technicians and paramedics
- 20) Medical records and health information technicians

- b. States must add additional professions to their systems as they are added to future versions of the ESAR-VHP *Guidelines*.
  - c. To increase ESAR-VHP functionality immediately after a disaster or public health emergency, states are encouraged to develop expedited ESAR-VHP registration and credential verification processes to facilitate the health response. (ASPR will provide further information in a separate guidance document.)
3. Each electronic system must be able to assign volunteers to one of four ESAR-VHP credential levels. Assignment will be based on the credentials and qualifications that the state has collected and verified with the issuing entity or appropriate authority.
  4. Each electronic system must be able to record all volunteer health professional/emergency preparedness affiliations of an individual, including local, state, and federal entities. The purpose of this requirement is to avoid the potential confusion that may arise from having a volunteer appear in multiple registration systems, e.g., Medical Reserve Corps (MRC), National Disaster Medical System (NDMS), etc.
  5. Each electronic system must be able to identify volunteers willing to participate in a federally coordinated emergency response.
    - a. Each electronic system must query volunteers upon initial registration and/or re-verification of credentials about their willingness to participate in emergency responses coordinated by the federal government. Responses to this question, posed in advance of an emergency, will provide the federal government with an estimate of the potential volunteer pool that may be available from the states upon request.
    - b. If a volunteer responds “Yes” to the federal question, states may be required to collect additional information, e.g., training, physical and medical status, etc.
  6. Each state must be able to update volunteer information and re-verify credentials every 6 months. (**Note:** ASPR is reviewing this requirement regularly for possible adjustments based on industry standards and the experience of the states.)

### **ESAR-VHP Operational Requirements**

7. Upon receipt of a request for volunteers from any governmental agency or recognized emergency response entity, all states must: 1) within 2 hours query the electronic system to generate a list of potential volunteer health professionals to contact; 2) contact potential volunteers; 3) within 12 hours generate a list of willing volunteer health professionals; and 4) within 24 hours provide the requester with a verified list of available volunteer health

professionals that includes the names, qualifications, credentials, and credential levels of volunteers.

8. Each state must develop a plan to recruit and retain volunteers.

ASPR will assist states in meeting this requirement by providing tools for accessing state registration sites and customizable materials and templates.

9. Each state must develop a plan for coordinating with all volunteer health professional/emergency preparedness entities to ensure an efficient response to an emergency, including but not limited to MRC units, NDMS teams, and the Federal Emergency Management Agency (FEMA) Citizen Corps.

10. Each state must develop protocols for deploying and tracking volunteers during an emergency (Mobilization Protocols):

- a. Each state is required to develop written protocols that govern the internal activation, operation, and timeframes of the ESAR-VHP system in response to an emergency. Included in these protocols must be plans to track volunteers during an emergency and for maintaining a history of volunteer deployments. ASPR may ask for copies of these protocols as a means of documenting compliance. ASPR will include protocol models in future versions of the ESAR-VHP *Guidelines*.
- b. Each state ESAR-VHP program is required to establish a working relationship with external partners, such as the local and/or state emergency management agency and develop protocols outlining the required actions for deploying volunteers during an emergency. These protocols must ensure 24 hour/7 days-a-week accessibility to the ESAR-VHP system. There are three areas of focus:

- 1) Intrastate deployment: States must develop protocols that coordinate the use of ESAR-VHP volunteers with those from other organizations, such as the MRC.
- 2) Interstate deployment: States must develop protocols outlining the steps needed to respond to requests for volunteers received from another state. States that have provisions for making volunteers employees or agents of the state must also develop protocols for the deployment of volunteers to other states through the state emergency management agency via the Emergency Management Assistance Compact (EMAC).

Each state must have a process for receiving and maintaining the security of volunteers' personal information sent to them from another state and procedures for destroying the information when it is no longer needed.

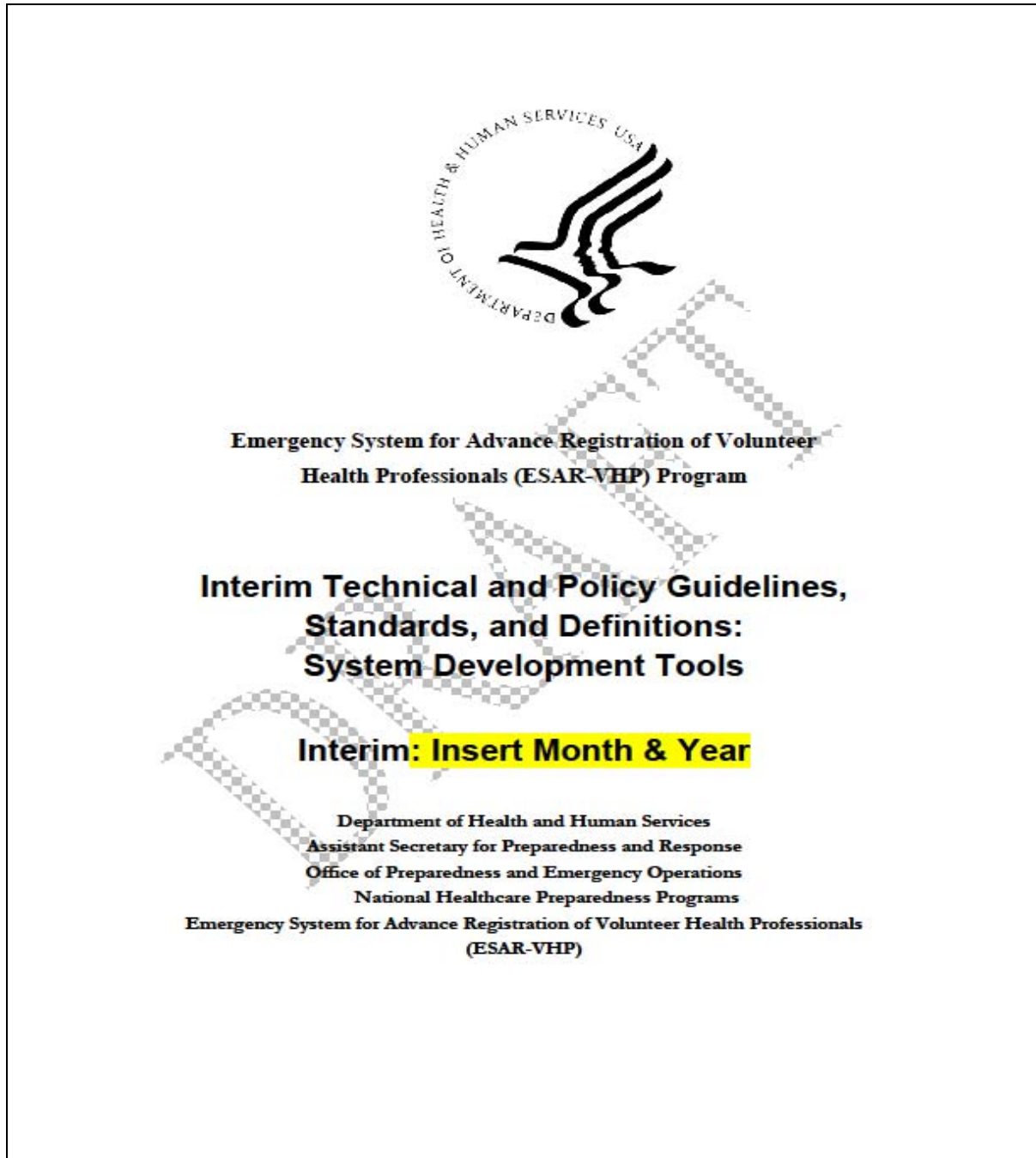
- 3) Federal deployment: Each state must develop protocols necessary to respond to requests for volunteers that are received from the federal government. Further, each state must adhere to the protocol developed by the federal government that governs the process for receiving requests for volunteers, identifying available volunteers, and providing each volunteer's credentials to the federal government.

## **ESAR-VHP Evaluation and Reporting Requirements**

11. Each state must test its ESAR-VHP system through drills and exercises. These exercises must be consistent with the ASPR Hospital Preparedness Program (HPP), Centers for Disease Control and Prevention's (CDC) Public Health Emergency Preparedness Program (PHEP), and ASPR ESAR-VHP program requirements for drills and exercises.
12. Each state must develop a plan for reporting program performance and capabilities. Each state will be required to report program performance and capabilities data as specified by the ASPR Hospital Preparedness Program (HPP), CDC Public Health Emergency Preparedness Program (PHEP), and/or the ASPR ESAR-VHP program.

**Appendix E - ESAR-VHP Interim Technical and Policy Guidelines, Standards, and Definitions (vs3, 04-19-10)**

*Double Click embedded PDF below to access:*



## Appendix F - Average MI Volunteer Usage by Year

Total Number of Users: 6,939

| <u>Type of Account</u> | <u>Number of Accounts</u> | <u>Percentage of Total Accounts</u> |
|------------------------|---------------------------|-------------------------------------|
| Volunteer              | 6812                      | 98%                                 |
| Local Administrator    | 91                        | 1%                                  |
| System Coordinator     | 23                        | 0%                                  |
| Regional Administrator | 13                        | 0%                                  |

Total Number of Credentialed and Verified Medical Professionals: 6,667

Total Number of Email Messages Sent for (1) Large Scale Exercise: 13,572

*Double click spreadsheet to access:*

| <b>Role</b> | <b>Date</b> | <b>Time</b> | <b># Emails</b> |
|-------------|-------------|-------------|-----------------|
| EPC 1       | 5/14/2012   | 12:00 PM    | 59              |
| EPC 2       | 5/14/2012   | 9:44 AM     | 102             |
| EPC 3       | 5/14/2012   | 9:36 AM     | 1               |
| EPC 4       | 5/11/2012   | 2:28 PM     | 1               |
| EPC 5       | 5/14/2012   | 1:00 PM     | 231             |
| EPC 6       | 5/15/2012   | 2:54 PM     | 57              |
| EPC 7       | 5/15/2012   | 4:17 PM     | 3               |
| EPC 8       | 5/14/2012   | 10:38 AM    | 48              |
| EPC 9       | 5/15/2012   | 2:31 PM     | 50              |
| EPC 10      | 5/15/2012   | 1:51 PM     | 120             |
| EPC 11      | 5/15/2012   | 10:51 AM    | 69              |
| EPC 12      | 5/15/2012   | 9:37 AM     | 111             |
| EPC 13      | 5/15/2012   | 2:29 PM     | 93              |
| EPC 14      | 5/15/2012   | 3:03 PM     | 110             |
| EPC 15      | 5/15/2012   | 10:43 AM    | 33              |
| EPC 16      | 5/15/2012   | 4:00 PM     | 57              |
| EPC 17      | 5/14/2012   | 8:15 AM     | 95              |