



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number **4**

to

Contract Number **071B4300079**

CONTRACTOR	Navient Solutions, LLC. 11100 USA Parkway Fishers, IN 46037 John Gennett 317-578-6658 john.gennett@salliemae.com *****4283
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STATE	Program Manager	Janet McKeown	TREA
		517-335-1723	
		McKeownj@Michigan.gov	
	Contract Administrator	Joshua Wilson	DTMB
		(517) 249-0444	
		wilsonj31@michigan.gov	

CONTRACT SUMMARY

STUDENT LOAN PROCESSING SRVCS (SERVICING OPERATIONS) – DEPARTMENT OF TREASURY

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 1, 2014	March 31, 2019	2 - 2 Year	March 31, 2019

PAYMENT TERMS

NET45

DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS

P-Card Direct Voucher (DV) Other Yes No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		June 30, 2018

CURRENT VALUE

\$40,821,919.00 (\$9,364,017.49) \$28,209,356.13

DESCRIPTION

Effective March 8, 2018, this Contract is amended as follows:

1. Estimated Aggregate Contract Value is reduced \$9,364,017.49
2. Expiration Date is changed to June 30, 2018 (Section 2.001)
3. Contract Administrator is changed to Joshua Wilson, 517-249-0444, WilsonJ31@michigan.gov (Section 2.021)
4. Contract will be assigned to Educational Credit Management Corporation pursuant to the attached Consent to Assignment Agreement and Section 2.029 Assignments.

All other terms, conditions, specifications and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement approval.

Consent to Assignment Agreement

Navient Solutions, LLC (the "Assignor"), a Delaware Corporation having its principal office at 123 South Justison Street, Suite 300, Wilmington, DE 19801; Educational Credit Management Corporation (the "Assignee"), a Minnesota Corporation having its principal office at 111 Washington Avenue South, Suite 1400, Minneapolis, MN 55401; and the Michigan Department of Technology Management and Budget, in coordination with the Michigan Department of Treasury (collectively, the "State"), enter into this Consent to Assignment Agreement ("Consent") on this 28th day of February, 2018 (the "Effective Date"). The Assignor, the Assignee, and the State are collectively referred to as the "Parties."

WHEREAS, the State and Assignor are parties to Contract No. 071B4300079 effective April 1, 2014 as modified and amended (the "Contract"), pursuant to which the State has contracted for certain loan guaranty services;

WHEREAS, Assignor plans to enter into an agreement to be effective as of June 30, 2018 to assign all of its rights and obligations under the Contract to Assignee (the "Assignment"), and has requested the consent of the State to such Assignment as required by Section 2.029 of the Contract; and

WHEREAS, the State agrees to consent to the Assignment subject to the terms and conditions set forth herein;

NOW THEREFORE, the Parties agree as follows:

1. Effective upon the execution of the Assignment, Assignor shall assign all its right, title, and interest, and delegate all its obligations, responsibilities, and duties in and to the Contract to Assignee, and Assignee shall accept the assignment of all of Assignor's obligations, responsibilities, liabilities, and duties under the Contract and all of Assignor's right, title, and interest in and to the Contract as if the Assignee were the original party to the Contract.
2. Assignee agrees to indemnify the State from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from Assignee's performance after the Assignment of the Contract.
3. Effective upon the execution of the Assignment, Assignor shall waive any claims and rights against the State that it now has or may have in the future in connection with the Contract.
4. All payments and reimbursements previously made by the State to the Assignor, and all other previous actions taken by the State under the Contract, shall be considered to have discharged those parts of the State's obligations under the Contract. All payments and reimbursements made by the State after the date of the execution of the Assignment in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of the State's obligations under the Contract, to the extent of the amounts paid or reimbursed.
5. The Assignor and the Assignee agree that the State is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the Assignment, other than those that the State in the absence of this Assignment would have been obligated to pay or reimburse under the terms of the Contract.
6. With regard to the Contract, the Assignee represents and warrants that:
 - a. It is registered to do business in the State of Michigan and has all of the licenses required in order to provide the goods/services pursuant to the Contract.
 - b. All certifications, representations and warranties in the Contract are true and accurate as to Assignee.
 - c. It is in a position to fully perform all obligations that may exist under the Contract.
 - d. Neither it nor any of its affiliates are in litigation or other dispute with the State of Michigan or any Agency thereof or other affiliated body or political subdivision of the State of Michigan.
 - e. Neither it nor any of its affiliates have been debarred, suspended, or disqualified from bidding or contracting with any entity, including the State of Michigan.
 - f. It is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

7. Assignor agrees to defend and indemnify the State from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from Assignor's performance prior to the Assignment of the Contract and resulting from Assignee's performance after the Assignment of the Contract, provided however, that after the Assignment of the Contract the State shall first look to Assignee to satisfy all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages resulting from Assignee's performance.
8. Assignor and Assignee represent and warrant that all information furnished and representations made in connection with this Consent is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading.
9. This consent is given without prejudice to the State's rights under the Contract, and is expressly limited to the assignment of the Contract to Assignee pursuant hereto, and shall not be deemed a consent to or authorization for any further or other assignment of the Contract. Nothing contained in this Consent shall be construed as modifying, waiving, or affecting any of the provisions, covenants, or conditions for any of the State's rights or remedies under the Contract. The State in executing its consent to the Assignment, does not release Assignor from any claims or remedies it may have against Assignor under the Contract.
10. This Consent shall not operate as a waiver of the prohibition against further assignments without the State's consent as provided in the Contract. Any attempt to further transfer the Contract without the consent of the State shall be void.
11. Amendments. This Consent may be amended or modified only by an instrument in writing signed by the State, Assignor, and Assignee. Any waiver shall be effective only for the specified purpose for which it is given.
12. Counterparts. This Consent may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Consent by signing any such counterpart; provided, this Consent shall not become effective prior to the State having received counterpart(s) hereof signed by all of the intended parties hereto.
13. Governing Law. This Consent is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Consent must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
14. Severability. If any provision of this Consent shall be declared by any court of competent jurisdiction illegal, void or unenforceable (in whole or in part) for any reason, the remaining provisions of this Consent shall not be affected, but shall remain in full force and effect.
15. IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Assignor

Assignee

The State

Joshua Wilson

(Assignor-Please Print)

(Assignee-Please Print)

(State-Please Print)

(Signature of Assignor)

(Signature of Assignee)

(Signature of State)

(Assignor-Title)

(Assignee-Title)

Senior Category Analyst

(State-Title)



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

CONTRACT CHANGE NOTICE

Change Notice Number **3**

to

Contract Number **071B4300079**

CURRENT CONTRACTOR	Navient Solutions, Inc.	NEW CONTRACTOR	Navient Solutions, LLC.
	11100 USA Parkway		11100 USA Parkway
	Fishers, IN 46037		Fishers, IN 46037
	John Gennett		John Gennett
	317-578-6658		317-578-6658
	john.gennett@salliemae.com		john.gennett@salliemae.com
	*****3973		*****4283

STATE CONTACTS				
Program Manager	Janet McKeown	TREA	Contract Administrator	Mary Ostrowski
	517-335-1723			(517) 284-7021
	McKeownj@Michigan.gov			OstrowskiM@michigan.gov

CONTRACT SUMMARY

STUDENT LOAN PROCESSING SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
April 1, 2014	March 31, 2019	2 - 2 Year	March 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
P-Card		Direct Voucher (DV)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		ESTIMATED AGGREGATE CONTRACT VALUE		
\$40,821,919.00		\$40,821,919.00		

DESCRIPTION

Effective March 1, 2017 the Contractor's name and FEIN number has changed from Navient Solutions, Inc. to Navient Solutions, LLC.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 2
 to
 CONTRACT NO. 071B4300079
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Navient Solutions, Inc. 11100 USA Parkway Fishers IN, 46037	John Gennett	john.gennett@navient.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	317-578-6658	3973

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	Treasury	McKeown, Janet	(517)-335-1723	McKeownj@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Mary Ostrowski	(517) 284-7021	OstrowskiM@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: Student Loan Processing Svcs			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 1, 2014	March 31, 2019	2 - 2 Year	March 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE		ESTIMATED AGGREGATE CONTRACT VALUE
\$40,821,919.00		\$ 0.00		\$40,821,919.00

DESCRIPTION: Effective December 22, 2015, the Contract language and pricing is hereby amended a result of the attached United States Department of Education's issuance of a Dear Colleague Letter GEN-15-14 letter dated July 10, 2015 and the attached Change Notice 2 Attachment.

The Contract Administrator is changed to Mary Ostrowski.

All other terms, conditions, specifications, and pricing remain the same, per Vendor and Agency agreement and DTMB Procurement approval.

Change Notice 2 Attachment

The following language is hereby incorporated into Sections 1.062.2.B Price Term and Attachment 3 Collections Price:

Based on the United States Department of Education's issuance of a Dear Colleague Letter GEN-15-14 on July 10, 2015:

For Loan Rehabilitation collections where the borrower enters a satisfactory repayment agreement within 60 days following the claim payment, fulfills all obligations of the repayment agreement, and qualifies for loan rehabilitation per 34C.F.R.682.405 of the HEA, as amended, no collection costs are assessed. The Contractor's Portfolio Management fee is reduced from 11.15% to 2%, applied to collected principal and accrued interest. This revised pricing is effective December 1, 2015.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

July 10, 2015

GEN-15-14

Subject: Repayment Agreements and Liability for Collection Costs on Federal Family Education Loan Program (FFELP) Loans

Summary: This letter restates the requirements for guaranty agencies regarding charging collection costs to FFELP borrowers who enter into repayment agreements

Dear Colleague:

In this letter we restate and clarify the rules that bar a guaranty agency from charging collection costs to a borrower who promptly after default enters into a repayment agreement, in particular a rehabilitation agreement, with that agency, and who honors that agreement.

A guaranty agency, after it pays a default claim and acquires the loan from the lender, is required to send an initial notice to the borrower. In that notice, the guaranty agency must give the borrower at least 60 days to take any of several actions, including entering into a repayment agreement with the guaranty agency. In this letter we refer to this step as the “notice and opportunity to resolve” the debt. A guaranty agency cannot charge collection costs to a defaulted borrower who, within the 60-day period following the initial notice, enters into a repayment agreement, including a rehabilitation agreement, and who honors that agreement.

These rules mirror how the Department treats those borrowers in its portfolio of FFELP and Direct Loans who enter into a repayment agreement during the initial notice and opportunity to resolve period for that borrower and honor that agreement. Few borrowers in the Department’s portfolio enter into repayment within that initial period.

Applicable provisions of the Higher Education Act

Section 484A(a) of the Higher Education Act of 1965, as amended (HEA), provides that defaulted borrowers “shall be required to pay, in addition to other charges specified in this subchapter . . . reasonable collection costs.” Section 428F(a) of the HEA requires the guarantor to offer the borrower an opportunity to have a defaulted loan “rehabilitated,” and the default status cured, by making nine timely payments over 10 consecutive months, after which the loan may be sold to a FFELP lender or assigned to the Department, and the record of default as reported by the guarantor is removed from the borrower’s credit history. Under the HEA and the Department’s regulations, the installment amounts payable under a rehabilitation agreement must be “reasonable and affordable based on the borrower’s total financial circumstances.”

Applicable provisions of Department regulations

The regulations direct the guarantor to charge the borrower “reasonable” collection costs incurred to collect the loan. 34 C.F.R. 682.410(b)(2). Generally, the charges cannot exceed the

lesser of the amount the borrower would be charged as calculated under 34 C.F.R. 30.60 or the amount the Department would charge if the Department held the loan. However, there is an exception, discussed later, for collection costs charged in connection with loan rehabilitation. 34 C.F.R. 682.410(b)(2), citing 34 C.F.R. 682.405(b)(1)(vi)(B). Before the guarantor reports the default to a credit bureau or assesses collection costs against a borrower, the guarantor must provide the borrower written notice that explains the nature of the debt, and the borrower's right to request an independent administrative review of the enforceability or past-due status of the loan and to enter into a repayment agreement for the debt on terms satisfactory to the guarantor. 34 C.F.R. 682.410(b)(5)(ii).

The regulations also provide that the reasonable and affordable payment required under a rehabilitation agreement must generally be an amount equal to 15 percent of the amount by which the borrower's adjusted gross income exceeds 150 percent of the poverty guideline amount applicable to the borrower's family size and State, divided by 12. 34 C.F.R. 682.405(b)(1)(iii). If the borrower objects to that proposed monthly payment amount, the guaranty agency must offer a reasonable and affordable payment amount based on the borrower's individual financial circumstances. 34 C.F.R. 682.405(b)(1)(vii). The guarantor must disclose to the borrower who seeks rehabilitation of a loan, among other matters, the amount of any collection costs to be added to the unpaid principal at the time of sale of the loan to a lender, which amount cannot exceed, currently, 16 percent of the unpaid principal and accrued interest at the time of sale. Section 428F(1)(D)(i)(II)(aa) of the HEA, 20 U.S.C. 1078-6(1)(D)(i)(II)(aa).¹

Background and rationale for the requirement to provide an initial “notice and opportunity to resolve” the debt

This section describes the context in which the Department adopted regulations requiring a guarantor to provide a borrower with this notice and opportunity to resolve a defaulted loan. Section 430A of the HEA requires guarantors and the Department, prior to reporting to a credit bureau that the loan is in default, to provide the borrower with notice that the loan will be reported as in default status “unless the borrower enters into repayment,” and requires the default to be reported “if the borrower has not entered into repayment within a reasonable time, but not less than 30 days from the date of the notice. . .” 20 U.S.C. 1080a(c)(4). In 1992, the Department adopted a regulation which requires the guarantor, “before it reports the default to a credit bureau or assesses collection costs against a borrower,” to provide the borrower an initial opportunity to challenge the enforceability or past-due status of the loan, to obtain an independent review of that challenge, to access the related records, and to agree to voluntary repayment. 34 C.F.R. 682.410(b)(5), 57 FR 60280, 60355-56 (December 18, 1992). The regulation uses the future tense in describing those actions that the guarantor may take to collect the debt, after providing the required notice: “costs will be charged,” and “the agency will report the default to credit bureaus.” 34 C.F.R. 682.410(b)(5)(vi)(E), (F) (emphasis added).

¹ For sales prior to July 1, 2014, the maximum rate was 18.5 percent. That rate was reduced to 16 percent by section 501 of Pub. L. 113-67, Dec. 26, 2013. That change has not yet been reflected in the Department's regulations.

In adopting the FFELP regulation in 1992, the Department expressly considered guaranty agencies' years of experience under the Federal tax refund offset program. Since 1984, the Department had been authorized to refer defaulted student loan debts to the Department of the Treasury for collection by offset against tax refunds owed to defaulted borrowers. 26 U.S.C. 6402(d), 31 U.S.C. 3720A. In 1986, the Department adopted regulations to establish the procedures for referring defaulted debt, which include giving the debtor notice of the proposed offset and an opportunity to avoid the offset by entering into a satisfactory repayment agreement. 34 C.F.R. 30.33, 51 FR 24092, 24095 (July 1, 1986). In adopting this offset rule, the Secretary made clear that the Department would use the guaranty agencies to perform certain functions on its behalf in order to collect those defaulted, federally reinsured loans held by guaranty agencies: sending the required pre-offset notice to the borrower, conducting an initial review if requested by the borrower, and providing the borrower an opportunity to avoid offset by making a timely agreement to repay the loan. 51 FR 24095, 24096 (July 1, 1986).

In 1992, the Department required a guaranty agency to provide the borrower an initial notice and opportunity to resolve the debt in all circumstances, not just for offset purposes, 57 FR 60280, 60356 (Dec. 18, 1992). Noting that guaranty agencies had experience with notice and opportunity because of their participation in the refund offset program, 57 FR 60280, 60312 (Dec. 18, 1992), the Department in these 1992 regulations provided that a guaranty agency would meet the new requirement by following those pre-offset rules: "the administrative offset procedures set forth at 34 C.F.R. 30.20 – 30.33 satisfy the requirements" that the guarantor must meet "before [the guarantor] reports the default to a credit reporting agency or assesses collection costs." 34 C.F.R. 682.410(b)(5)(iii). Thus, by pointing to the offset procedure as a model for the overall FFELP notice and opportunity to resolve rule, the Department showed that it intended the new FFELP rule to follow the same offset rules: the borrower could avoid the adverse consequences (report of the default status of the debt, liability for collection costs, and further collection actions) by making a timely agreement to repay the debt voluntarily.

Background and rationale for the requirement to charge collection costs

The 1992 final rule also required the guarantor, for the first time, to charge collection costs. 34 C.F.R. 682.410(b)(2); 57 FR 60280, 60355 (Dec. 18, 1992). In this rule the Department interpreted the statutory term "reasonable collection costs" in section 484A(b) of the HEA by capping the collections at the lesser of the actual costs incurred by the guarantor under a "make whole" formula in 34 C.F.R. 30.60, or the rate the Department would charge if it held the loan. As the Department explained in briefs and in the testimony of responsible Department officials in *Education Credit Management Corp. v. Barnes*, 318 B.R. 482 (S.D. Ind. 2004), *aff'd*, 459 F.3d 796 (7th Cir. 2006), claims for repayment of defaulted, federally reinsured FFELP loans are claims of the United States, and, accordingly, Department rules for their collection conform with the Federal Claims Collection Standards (FCCS).² At the time of the 1992 Department's collection costs rule, the FCCS directed Federal agencies to charge delinquent debtors the costs of collection, which an agency was to determine based "upon cost analyses establishing an

² The Department recognized the applicability of the FCCS to FFELP regulations in 1992 in issuing the FFELP collection costs regulation and again in 1996, in regulating the manner in which payments must be applied by the guaranty agency. 61 FR 60482 (Nov. 27, 1996).

average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency." 4 C.F.R. 102.13(d)(1992) (emphasis added).³

In response to this government-wide directive, the Department adopted a regulation which distinguishes between defaulted borrowers who agree promptly to repay – within the 60-day resolution period – from those defaulters who do not immediately cooperate and for whom the guarantor may incur significant costs to pursue. Consistent with the Department's long-standing practice and with its interpretation of the HEA provisions, the FFELP regulation treats the two groups as in "different stages of delinquency" from the FCCS perspective, and directs that costs be charged only to the second group. The Department stated this position in response to an inquiry from a guarantor in 1997.⁴

Thus, the regulations direct the guaranty agency to charge the borrower collection costs - but only after the guaranty agency provides borrower the opportunity to dispute the debt, to obtain review the objection, and to agree to repay the debt on terms satisfactory to the guarantor. If the borrower agrees within that initial period to repay the debt under terms satisfactory to the guarantor and consistent with the requirements, the borrower cannot be charged collection costs at any time thereafter unless the borrower later fails to honor that agreement.⁵ In determining whether those costs are reasonable and properly charged to a borrower who timely agrees to repay and honors that agreement, it is irrelevant whether the guaranty agency uses its own staff to provide the notice and opportunity to resolve or contracts for those services.

Background and rationale for the requirement to offer loan rehabilitation

In June 1994, the Department adopted a regulation to implement the loan rehabilitation provisions in section 428F(a) of the HEA (20 U.S.C. 1078-6(a)). 34 C.F.R. 682.405, 59 FR 33334, 33335 (June 28, 1994). To have a defaulted loan rehabilitated, a borrower must request rehabilitation and voluntarily make nine out of 10 monthly payments in the amount determined

³ In describing the kinds of differences between groups of borrowers that would warrant differing charges, the General Accounting Office and the Justice Department distinguished in the FCCS between those costs incurred by the agency "in any event" in handling the debt, and those incurred "by virtue of the delinquency." 49 FR 8893 (March 9, 1984). Examples of costs incurred "by virtue of the delinquency" included the costs of hiring additional personnel and retaining private debt collectors to pursue recovery from those who do not respond to the routine initial demand by the agency. *Id.* FFELP regulations permit a lender to charge collection costs, but bar the lender from charging for costs of such routine activities as preparing notices and making contact with the borrower. 34 C.F.R. 682.202(f)(2). The Department or the guaranty agency, as applicable, must notify the borrower if it acquires a loan. The cost of doing so, and of responding to the initial notice in which this would be communicated, was expected to be minimal-more akin to the cost of servicing activities that lenders routinely conduct, such as considering requests for forbearances, deferments, or income-based repayment terms - costs which lenders must defray from interest earnings on their portfolio - than to the significant expenses in hiring additional staff or retaining private debt collectors to pursue those borrowers who do not promptly agree to repay.

⁴ Letter from Ronald Streets, Program Specialist, Student Financial Assistance Programs, Department of Education, to Phillip Cervin, Asst. Vice President, Texas Guaranteed Student Loan Corporation (July 28, 1997).

⁵ 34 C.F.R. 682.404(f) does not require or authorize the guarantor to charge the default collection costs, but simply directs the order in which a payment must be applied to a loan on which those costs are properly charged. Thus, if there are no late charges owed on the loan, §682.404 does not authorize the guarantor to charge late fees simply by mentioning the order in which any late fees properly imposed are to be satisfied.

by the guarantor in a written installment payment agreement. Thus, a rehabilitation agreement is simply a specific form of a satisfactory repayment agreement.

The Department's loan rehabilitation regulations require that the guarantor explain to the borrower the terms of the rehabilitation agreement or arrangement, including "the amount of the collection costs to be added to the unpaid principal at the time of the sale [which] may not exceed 18.5 percent of the unpaid principal and accrued interest at the time of sale." 34 C.F.R. 682.405(b)(1)(iv) (1994).⁶ As explained in a Departmental Dear Guaranty Agency letter on March 29, 1994, the Department did not adopt the (original) 18.5 percent regulatory "cap" on the collection costs charged at the time of sale in order to give guarantors authority to charge such costs, but rather to limit the amount that a guarantor could charge – at the time of the sale – to those borrowers who were already liable for collection costs under existing authority. The change was needed because, at that time, the maximum collection costs rate that was permitted on borrower payments generally was the rate then charged (on routine recoveries) by the Department, which was "sometimes as high as 43 percent of the outstanding principal and interest on the defaulted loan."⁷ The Department "concluded that the amount of collection costs currently assessed borrowers as reasonable under 34 C.F.R. 682.410(b)(2) is not reasonable when the borrower has shown the initiative to address the default through [rehabilitation]."⁸

Nothing in the 1994 rehabilitation regulations exempts loan rehabilitation transactions from the general rule that allows a guarantor to charge collection costs only to a borrower who fails to enter into a repayment agreement satisfactory to the agency within the 60-day period following the initial notice and opportunity to resolve. The loan rehabilitation agreement with the borrower is clearly a "repayment agreement."⁹ Moreover, the loan rehabilitation agreement is an agreement on terms that the guaranty agency must accept as satisfactory to the agency. Thus, a guaranty agency cannot use the collection activities otherwise required if a borrower, in this initial period, enters into a rehabilitation agreement and then honors that agreement.¹⁰

⁶ As noted earlier, this rate was reduced to 16 percent by 2013 amendments.

⁷ Dear Guaranty Agency Director Letter, March 29, 1994, at 2.

⁸ *Id.* In March 1995, the Department reduced that charge to no more than 25 percent of the portion of the particular payment that is applied to principal and interest; the amount used to defray costs thus equals 20 percent of the total amount of the payment. Since that 1995 change, the "cap" has not exceeded that rate of 20 percent of the gross amount of the payment.

⁹ See: 34 C.F.R. 682.405(a)(2)(i) and (b)(1), which refer to the "rehabilitation agreement" as a "monthly repayment agreement."

¹⁰ The regulation states that to avoid credit reporting as in default and collection action, the borrower must enter into "a repayment agreement on terms satisfactory to the agency," 34 C.F.R. 682.410(b)(5)(ii)(D). The context makes clear that a rehabilitation agreement is such a "satisfactory" repayment agreement. First, 34 C.F.R. 682.410(b)(6) requires the guarantor to take specific collection action - garnishment and offset - if the borrower fails to timely enter into an "acceptable" repayment agreement. Section 488A of the HEA allows a guarantor to collect the debt by garnishment only if the borrower is "not currently making payments under a repayment agreement with . . . the guaranty agency," 20 U.S.C. §1095a(a) (emphasis added). The guarantor, further, may not even start garnishment for a borrower who "requests rehabilitation." 78 FR 45636 (July 29, 2013). Similarly, 31 U.S.C. §3720A permits collection by offset only of "past-due, legally-enforceable debt," allows the borrower to object to offset on the ground that the debt is not "past-due," 31 U.S.C. §3720A(b)(2), and requires the creditor agency to affirmatively determine that the debt is "past-due." 31 U.S.C. §3720A(b)(3). A "past-due" debt is a debt not paid by the date

The charging of collection costs upon completion of a loan rehabilitation by the sale or assignment of the loan was first addressed in the 2006 amendment to section 428F to the HEA. Those amendments provided that the guaranty agency “may in order to defray collection costs, charge the borrower an amount not to exceed 18.5 percent of the outstanding principal and interest at the time of the loan sale, and retain such amount from the proceeds of the loan sale.” 20 U.S.C. 1078-6 as amended by the Higher Education Reconciliation Act of 2005 (HERA), P.L. 109-171, section 8014(h), February 8, 2006. The legislative history of this change shows that the amendment was intended to codify “the collection costs permissible for rehabilitated loans at up to 18.5 percent of the outstanding principal and interest of the loan.” H.R. Rep. No. 276, 109th Cong. 1st Sess. (2005) at 240. Existing Department regulations had already established which costs were permissible; because the amendment simply “codified” the permissible costs, the amendment did not empower a guarantor to charge costs that were not already permitted under the regulations. The Department promptly recognized that this 2006 amendment simply “codified” those permitted costs, rather than superseding existing regulatory limits on collection costs. In Dear Colleague Letter Gen 06-02, issued March 2006, the Department characterized the HERA amendment not as granting “authority” to charge costs, but rather as merely “specifying” the limits to that existing authority as those already contained in the regulation.

Conclusion

Department regulations bar a guaranty agency from charging collection costs to a defaulted borrower who responds within 60 days to the initial notice provided by the guaranty agency, enters into a repayment agreement, including a rehabilitation agreement, and who honors that agreement. This includes, in the case of loan rehabilitation, both collection costs on the initial and subsequent qualifying payments and collection costs upon the ultimate sale or assignment of the loan. For defaulters who do not enter into a repayment agreement, guaranty agencies can and should charge collection costs.

Thank you for your cooperation.

Sincerely,



Lynn B. Mahaffie
Deputy Assistant Secretary for
Policy, Planning, and Innovation
Office of Postsecondary Education

specified, as pertinent here, in the “applicable agreement” “including a post-delinquency payment agreement.” 31 C.F.R. 285.5(b). The guarantor cannot proceed to collect by offset or garnishment any debt already being repaid under any “post-delinquency payment agreement.” Therefore, 34 C.F.R. 682.410(b)(6) must be read, in context, to require the guarantor to pursue such collection actions only against a borrower who fails to timely enter into, and to honor, any form of repayment agreement, including a rehabilitation agreement.

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

CHANGE NOTICE NO. 1 (REVISED)

to
CONTRACT NO. 071B4300079
 between
THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Navient Solutions, Inc. 11100 USA Parkway Fishers, IN 46037	John Gennett	John.gennett@navient.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	317-578-6658	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Treasury	Janet McKeown	517-335-1723	mckeownj@michigan.gov
BUYER	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Student Loan Processing Services (Servicing Operations) – Department of Treasury			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
April 1, 2014	March 31, 2019	2, two year	March 31, 2019
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	
\$0.00			\$40,821,919.00	

Effective November 3, 2014, the contractor's name has been changed to Navient Solutions, Inc. Please note the buyer has been changed to Brandon Samuel. Please also note that a correction has been made to the contract to show that there are 2, two year options available for use, not 2, one year options as previously shown. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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

CHANGE NOTICE NO. 1
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THE STATE OF MICHIGAN
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	TELEPHONE	CONTRACTOR #, MAIL CODE
	317-578-6658	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Treasury	Janet McKeown	517-335-1723	mckeownj@michigan.gov
BUYER	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY:				
DESCRIPTION: Student Loan Processing Services (Servicing Operations) – Department of Treasury				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
April 1, 2014	March 31, 2019	2 one year	March 31, 2019	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
Net 45	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:				
N/A				

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$40,821,919.00		
Effective November 3, 2014, the contractor's name has been changed to Navient Solutions, Inc. Please note the buyer has been changed to Brandon Samuel. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				

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

NOTICE
OF
CONTRACT NO. 071B4300079
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Sallie Mae, Inc. 11100 USA Parkway Fishers, IN 46037	John Gennett	john.gennett@salliemae.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(317) 578-6658	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	Treasury	Janet McKeown	(517) 335-1723	mckeownj@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:				
DESCRIPTION:				
Student Loan Processing Services (Servicing Operations) – Department of Treasury				
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	
Five Years	April 1, 2014	March 31, 2019	2, Two Year Options	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
Net 45	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:				
N/A				
MISCELLANEOUS INFORMATION:				
N/A				
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$40,821,919.00	

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

CONTRACT NO. 071B4300079
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Sallie Mae, Inc. 11100 USA Parkway Fishers, IN 46037	John Gennett	john.gennett@salliemae.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(317) 578-6658	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	Treasury	Janet McKeown	(517) 335-1723	mckeownj@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:				
DESCRIPTION:				
Student Loan Processing Services (Servicing Operations) – Department of Treasury				
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	
Five Years	April 1, 2014	March 31, 2019	2, Two Year Options	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
Net 45	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:				
N/A				
MISCELLANEOUS INFORMATION:				
N/A				
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$40,821,919.00	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #071I2200137. Orders for delivery will be issued directly by the Department of Insurance & Financial Services through the issuance of a Purchase Order Form.

Notice of Contract #: 071B4300079

FOR THE CONTRACTOR:

Sallie Mae, Inc.

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB Procurement

Enter Name of Agency

Date



STATE OF MICHIGAN
Department of Technology Management and Budget
DTMB-Procurement

Contract No. 071B4300079
Student Loan Processing Services (Servicing Operations)

Buyer Name: Don Mandernach
Telephone Number: (517) 284-7019
E-Mail Address: mandernachd@michigan.gov



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Attachment 1: Account Maintenance Fee

Attachment 2: Default Aversions Services Price Proposal

Attachment 3: Collections Price Proposal

Attachment 4: Forms Estimate and Price Proposal

Attachment 5: Price Proposal Summary

Appendix B, What Is an Incident (Brochure)



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.

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 Contract must provide state-of-the-art school, lender, and guarantee agency services for supporting all guaranty agency functions of the Michigan Guaranty Agency (MGA).

This Contract is for the Department of Treasury, State and Authority Finance Bureau; Michigan Guaranty Agency.

1.012 Background

The Department of Treasury, State and Authority Finance Bureau, MGA serves as the guarantor of the post-secondary education loan guaranty programs for the State of Michigan. MGA currently administers six different types of Federal Family Education Loan Program (FFELP) loans under the following programs:

- Federal Subsidized Stafford Loan Program (implemented 1962)
- Federal Unsubsidized Stafford Loan Program (implemented 1992)
- Federal PLUS Loan Program (implemented 1982)
- Federal Grad PLUS Loan Program (implemented 2006)
- Federal Supplemental Loans to Students (SLS) (implemented 1982)
- Federal Consolidation Loan Program (implemented 1988)

As of October 1, 2011, approximately \$3.2 billion in loans are outstanding for these six programs.

MGA has significant demand for services. In 1986, MGA contracted for a strategic review of program goals, objectives, and alternatives to determine the proper future role of the program. As a result of that study, an RFP was written to select a Contractor to provide state-of-the-art school, lender, and guarantee agency services and allow MGA to provide the latest technology to its borrower, school and lender clients. The incumbent contract for servicing, awarded to Sallie Mae Servicing Corporation expires February 28, 2013, and the incumbent contract for Default Aversions, awarded to Student Assistance Corporation expires February 28, 2013.

It is the goal of MGA to continue providing clients the superior products and services they have come to expect. MGA also faces the challenge of implementing extensive federal regulatory change while maintaining and enhancing its services to clients.

1.020 Scope of Work and Deliverables

1.021 In Scope

By contracting with Servicer, MGA seeks to accomplish the following major objectives:

1. Provide and maintain superior computer and other services to support all MGA loan guarantee servicing functions for participating schools and lenders, including such features as:
 - A. Technical assistance in maintaining a range of options for software, hardware, and telecommunications for electronic exchange of information (PC-based, electronic transmission, Internet-based, on-line processing, etc.) among the Contractor, MGA, MGA clients, and other required outside entities (U.S. Bureau of Internal Revenue [IRS], National Student Loan Data System [NSLDS], etc.).
 - B. Volume sourcing/procurement, documentation, training, and distribution/implementation assistance for the above Section 1.021, 1A (including initial/ongoing billing for such services via MGA or directly to clients, as appropriate to meet state and federal requirements).
 - C. Full lender service options including, but not limited to, maintenance of lender records, integrated/tightly interfaced “state-of-the-art” options for “full service” and “data processing only” lender portfolio servicing.



- D. Integrated default aversions and collection process that includes predictive dialing, outbound call processing including automated call distribution capability with integrated immediate file access and viewing, electronic check writing, real-time changes, on-line report generation, and integration to collection tool service providers (e.g., credit bureaus, bankruptcy databases, etc.).
- E. Appropriate secured access control for on-line inquiry/update of databases by MGA, schools, and lender staffs. (See Section 1.022, 3B6)

2. Continue contracting of selected administrative and clerical support activities to the Servicer. Exhibit A-1 (page 57) shows a summary of guaranty agency functions performed by Servicer and MGA.

3. Conform/streamline the operations of MGA as much as possible to the Servicer's existing systems capabilities/procedures in order to reduce the amount of time necessary to modify and implement the Servicer's systems.

4. Provide MGA with automated changes to systems as a result of federal regulation changes. These changes need to be implemented as required by federal regulations, to eliminate manual corrections and to ensure efficiency and accuracy.

5. Design any required Servicer system modifications and select/implement required equipment (computer hardware, telecommunications networks, telephone answering, predictive dialing equipment, etc.) to minimize the technical difficulty and future costs associated with potentially converting operations back to MGA or a successor Servicer at the end of the Contract.

1.022 Work and Deliverable

Servicer and other Contractor(s) must provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. It describes the scope of primary services and default aversions services and requirements for administrative, manual and computerized processing support addressed by this Contract. The Servicer and Default Aversions Contractor are not, however, constrained from supplementing this listing with additional steps, subtasks, or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

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1. GENERAL REQUIREMENTS

The following general requirements will govern all features, functions, and services requested from the Servicer and Default Aversions Contractor, unless otherwise noted.

The Servicer must house the MGA database on its system, process loan requests, perform functions related to education loan assistance support for MGA clients throughout the life of the Contract, stringently monitor service levels, assist with financial literacy and outreach services and:

- A. Servicer and Default Aversions Contractor must ensure the prominent identification of MGA in all forms of interaction with all MGA clients, including, but not limited to, displaying the MGA logo on all forms, informational materials, and correspondence.
- B. Review, analyze, and understand all federal and state laws, regulations, and rules. As legislative and regulatory changes are enacted, the Servicer and Default Aversions Contractor must give MGA the opportunity to review and offer ideas and concerns regarding the Servicer's and Default Aversions Contractor's proposed system and procedural changes before design and implementation. However, the Servicer and Default Aversions Contractor ultimately will be responsible for implementing changes and maintaining compliant systems and procedures. The Servicer and Default Aversions Contractor must apprise MGA of the implementation schedule for changes requiring more than 90 calendar days.

To the extent that specific requirements are defined within this Contract in terms of/reference to current federal or state laws/regulations/rules, those functions, features, reports, etc. must be amended accordingly as federal/state laws/regulations/rules change.



- C. Servicer must provide experts to serve as witnesses and provide testimony on behalf of the SOM or MGA. Such services must be provided at the request of MGA at no additional cost to MGA. Such testimony may require the Servicer's appearance in court, at depositions, at hearings, or any other required circumstances.
- D. The Servicer must respond to at least 95% of all written inquiries and take appropriate action within five days of receipt date or 48 hours of receipt of electronic request. The Servicer's staff responsible for drafting responses to such inquiries must have access to files and records necessary to research all issues, problems, and questions that may arise during program administration for which the Servicer and Default Aversions Contractor are responsible. The Servicer's and Default Aversions Contractor's staff must be able/qualified to accurately handle questions of a complex nature (see Sections 1.022, 4B, 4C, 4D, and 4G).
- E. In cases of inquiries received from the State Treasurer, Office of the Superintendent of Public Instruction, Office of the Governor, a U.S. Senator, a U.S. Representative, a Michigan Legislator, or a Congressional or State Legislative staff member, the Servicer and Default Aversions Contractor must notify the Contract Compliance Inspector (CCI) or designee of the request as soon as possible, but in no case more than 24 hours after receipt of the inquiry. In all cases, the Servicer and Default Aversions Contractor must obtain, for any of the above inquiries, the borrower's written authorization to release information to that office according to the Gramm-Leach-Bliley Act. If possible, prior to responding to such inquiries, the Servicer's and Default Aversions Contractor's staff must notify CCI or designee of the inquiry and its proposed response. All responses to such inquiries then must be handled within one day of CCI or designee clearance.
- F. Postsecondary Electronic Standards Council: The Servicer must continue to be in contact with the Postsecondary Electronic Standards Council regarding industry standards. As a servicer of Federal Direct Loans for the U.S. Department of Education, Sallie Mae will continue to provide input to the PESC.
- G. The Contractor's EAGLE system is compliant with the Federal Information Security Management Act (FISMA-ready). Work performed to date to achieve such system FISMA-readiness has been provided at no cost to MGA. Additional work may be needed to fully secure the data boundary for MGA along with annual testing of security controls and obtaining third-party certification of compliance. Costs associated with this work may be billable to MGA.

The State should recognize that the Contractor's FISMA-ready data system does not suggest or imply that MGA is compliant with FISMA and NIST standards. The controls over the State's use of MGA loan data must also be subject to compliance with FISMA and NIST standards. Additional work on behalf of the State at the State's own expense will be necessary to identify and test security controls, remediate any noted weaknesses and obtain the necessary certifications of compliance to FISMA and NIST standards.

H. Unique numbers assigned to MGA loans:

a. Effective March 8, 1999, MGA converted to a system that assigns a unique 11-digit number (MI followed by nine [9] numeric characters) to all MGA loans. This numbering system needs to be converted and continued. These numbers are passed on to National Student Loan Data System (NSLDS) for each loan for every borrower.

b. Sallie Mae must continue to support the unique account number that does not incorporate the borrower's Social Security number. This number must be used through the life of the loan.

2. PROGRAM CONVERSION – Reserved

3. INFORMATION TECHNOLOGY MANAGEMENT



A. General Requirements

- 1) Throughout the Contract, the Servicer must provide, on behalf of MGA, all data processing, system maintenance, and services necessary to administer the MGA FFELP loan programs in accordance with applicable federal laws and regulations, the laws of the State of Michigan, and MGA's rules and policies, at no additional cost to MGA. Any extensive modifications to Sallie Mae systems due to changes in State laws or MGA's rules and policies may result in additional charges and are covered in the 4,000 programmer hours per Contract year. Additional modifications may result in additional charges to MGA.
- 2) The Servicer's proprietary EAGLE system is a "composite application architecture system" that includes hardware, software, internet-based technology, telecommunications, and procedures that are comprehensively integrated and "state-of-the-art" relative to the data processing, communications, and guaranteed student loan industry and any related industry standards. The Servicer must provide comprehensive software and data processing support for all guaranty agency functions as specified for each of the MGA FFELP loan programs. The Servicer's system must provide "state-of-the art" technology including:
 - On-line loan status inquiries for lenders, and borrowers;
 - On-line querying of loan data to create custom/ad hoc reports for lenders, lender Contractors, and MGA;
 - On-line access to print or download standard daily, weekly, monthly or quarterly reports for lenders, lender servicers, and MGA; and
 - Seamless, invisible links to and from MGA's Internet page (see <http://michigan.gov/mistudentaid>). (See Section 1.042, 3.)
- 3) The Servicer's system must interface with external systems such as U.S. Department of Education [ED], the NSLDS, the National Student Clearinghouse [NSC], collection agencies/subcontractors, and any other agencies that may work with MGA as required, as well as must be adaptable to regulatory changes and industry efforts (see Section 1.022, 1B) to provide standard ("common") forms, procedures, systems, etc.
- 4) In order to perform the required activities, the Servicer's proposal must demonstrate the human, computer/physical (technical), and financial resources, as well as business expertise necessary to provide appropriate manual and computer systems. These services will be delivered primarily from Sallie Mae's Fishers, Indiana and Muncie, Indiana service centers.
- 5) Systems to be used as a basis for supporting the FFELP loans guaranteed by MGA must be in place and operational at the levels specified in this Contract and support an active student loan guaranty agency operation somewhere in the United States at the time of this Contract.
- 6) The Servicer's system must either meet or be suitable for modification to meet all the processing requirements of this Contract.
- 7) The Servicer must be responsible for all system development, programming, testing, and implementation throughout the Contract period. Sallie Mae will charge MGA for computer programming and processing for any software, system, program or reporting modifications requested by MGA that is not federally-mandated. If the software and/or system change is provided to other Sallie Mae customers, MGA and the participating customers may share costs on a proportional basis.
- 8) The Servicer must establish and execute system job streams and run schedules (batch processing) necessary to meet the agreed-upon schedule of daily, weekly, monthly, quarterly, annual, holiday, and other periodic processing as reviewed and approved by the CCI.



9) The Servicer and Default Aversions Contractor must provide on-line, keyed access to its systems for required, authorized inquiry, and updating by MGA, Contractor, Default Aversions Contractor, and client staffs (see Section 1.022, 4A) to assist in resolving all inquiries, problem situations, etc. on behalf of its clients in the various programs, including those functions for which the Servicer and Default Aversions Contractor will provide administrative and clerical support, subject to appropriate system security requirements and user access restrictions (see Section 1.022, 3B6). Security access/update capabilities and restrictions will be defined for each user group by CCI or designee (by guaranty agency function, if necessary) with the Servicer and Default Aversions Contractor during Program Conversion operational analysis activities.

Both program summary and detailed account information must be available on-line for each agency function. Records must be accessible via search by borrower Social Security number or borrower last and first name (see Section 1.042, 3 for ad hoc reporting requirements). Development of a unique account number for each borrower is also necessary to comply with the privacy/identity theft legislation in place in many states.

10) System availability hours of the Servicer and Default Aversions Contractor, at a minimum, must be Monday through Friday, 7:30 a.m. to 9:00 p.m. and Saturday, 9:00 a.m. to 1:00 p.m. Eastern Time (ET). Additional access can be provided to MGA on Saturdays if desired, at no additional charge. Twenty-four/seven (24/7) is required for accessibility by Interactive Voice Response (IVR) System and Internet-based access for delinquent and defaulted borrowers with the exception of two 30 minute windows daily: one at midnight and the other a 3:00 a.m. to recycle the system.

Servicer and Default Aversions Contractor operation's staffing are expected to be available, at a minimum, 8:00 a.m. to 5:00 p.m. ET, Monday through Friday. Servicer's and Default Aversions Contractor's staff who oversee the availability of the system must be available to resolve system access issues during all published MGA business hours.

The Servicer and Default Aversions Contractor must staff a technical Help Desk for MGA staff and MGA client telephone calls/questions regarding computer software, equipment, communications, and other technical problems. Technical requests for assistance must be handled in the same manner, via e-mail and/or the same toll-free number, and with the same service levels as all other program questions.

Holidays for both systems operation and staffing must coincide with those of MGA.

11) The Servicer's and Default Aversions Contractor's systems availability/"up-time" must average 99%, without rounding, for the General Service hours of operation as specified in Section 1.022, 3A10. The average will be calculated as a weekly average of six days, Monday through Saturday, excluding MGA holidays.

12) All system outages/shutdowns during scheduled hours must be reported immediately to CCI or designee. Within 24 hours of problem resolution and restart, the Servicer and Default Aversions Contractor must prepare a report indicating elapsed downtime hours, start/end timeframes, reason for the outage, impact on the systems (lost data, etc.) for each occurrence and resolution to mitigate future occurrences. Planned outages must be communicated at least seven days in advance to CCI or designee.

13) The Servicer's and Default Aversions Contractor's Mean Time Between Failure (MTBF) of its systems during scheduled available hours must not be more than 30 days on average when calculated over a 12-month Contract period. Mean Down Time (MDT) per system failure must not exceed four hours in length. If Sallie Mae Systems fail, Sallie Mae will make every effort to achieve a Mean Down Time per failure of no greater than four hours.

14) System response time designated as the time the "enter" key or its equivalent is depressed until the requested information appears on the screen must average from one to five seconds, 90% of the scheduled "up-time." If the time frame for the information to appear exceeds the expected time



frame, recommendations for improvement of the response time must be made. This average will be calculated as described for system availability in Section 1.022, 3A11.

15) Upon request, the Servicer and Default Aversions Contractor must submit monthly reports that indicate actual performance versus the Contract service levels and objectives described in Sections 1.022, 3A10 through 3A14 (see Section 1.042, 2).

16) Audit Trail

- a. MGA requires that the Servicer's and Default Aversions Contractor's systems provide a complete and accurate reflection (audit trail) of all financial and non-financial transactions affecting the databases. Transaction audit records must include, at a minimum, the following:
 - i. User ID/source of transaction.
 - ii. Date the change was posted. (Time is also preferable.)
 - iii. Changed from/to field values.
- b. Complete on-line transaction history must be maintained chronologically and by account in an electronic format. Audit trail data must be returned to MGA, at the end of the Contract, with sufficient instructions for MGA or a subsequent Servicer or Default Aversions Contractor to convert the information to a successor servicing system.
- c. Standardized on-line history messages/codes must be available for Servicer, Default Aversions Contractor, and MGA staff to update history based on all attempts to contact borrowers, references, schools, lenders, etc. Servicer, Default Aversions Contractor, and MGA staff must also be able to enter and retrieve on-line free-form history messages to cover unique situations. The Servicer and Default Aversions Contractor must allow for the addition of new standardized and free-form messages.

17) Imaging

Prior to June 10, 1996, MGA incoming and outbound documents (correspondence, reports, etc.) were microfilmed or microfiche by MGA and Servicer's staff. Documents were indexed individually (with the date, account cross-reference detail, etc.) on the current Servicer's system. Back-up copies of all microfilm and microfiche are maintained off-site.

As of June 10, 1996, all MGA incoming and outbound documents received by the current Servicer have been scanned and stored as images on optical platters in a .tif format. Such documents are indexed individually by Social Security Number (SSN), and SSN's for indexing is downloaded daily to MGA's imaging system. The current Servicer creates a back-up copy of each platter and stores the back-up copies off-site. The SOM is currently in the process of converting all documents to a content addressable storage system.

All incoming and outbound documents received by MGA have been scanned and stored as images on optical platters by MGA staff since December 28, 1998, using FileNet software. MGA individually indexes its documents by SSN on the MGA imaging system. As MGA creates optical platters, back-up copies automatically are created on optical platters. Back-up copies are maintained off-site.

The Servicer and Default Aversions Contractor must continue to support all of these processes, which will continue in their current formats (.tif format) for the foreseeable future. In addition, MGA, Servicer's, and Default Aversions Contractor's staff must be able to view both the Servicer, Default Aversions Contractor, and MGA index and documents on-line for all imaged documents in an integrated fashion.

- a. After conversion, the Servicer and Default Aversions Contractor must have compatible equipment to image and retrieve/view and read/print all existing and new documents as necessary to service existing and future business regardless of the technology involved. All equipment and installation costs must be included in the Program Conversion (see Section 1.022, 2) or on-going program operations costs unless otherwise specified.



- b. The Servicer and Default Aversions Contractor must image all incoming and outbound documents received or sent on behalf of MGA into a .tif format, excluding change transaction and canned letters sent to borrowers. Documents must be imaged and made available within five business day of receipt. Retrieval of images must be in compliance with Section 1.022, 3A14. Contractors imaging schedule and turnaround times vary depending on type of document. For example, claim files are made available within five business days from receipt and Litigation and Post Claim Assistance documents are available within two business days. All documents imaged by Sallie Mae are available within five business days.
- c. The Servicer and Default Aversions Contractor must provide an interface to enable MGA, Servicer's, and Default Aversions Contractor's staff to identify all imaged documents with specific accounts on the main database. MGA must be able to access/retrieve/view/print indexing information and documents from the Servicer's and Default Aversions Contractor's systems using existing MGA personal computers and software.
- d. All optical platters and the accompanying index prepared by the Servicer and Default Aversions Contractor during the course of the Contract are the property of MGA and must be provided to the CCI or designee at the end of the Contract.
- e. The imaging system must have back-up and recovery procedures per Section 1.022, 3B3.

18) Any communication on an account must be reflected chronologically in the account history regardless of its nature. This includes all attempted telephone contacts, actual telephone conversations, or written communication received or sent. The Servicer's and Default Aversions Contractor's system must provide the ability for any MGA contact activity to be captured and integrated in this fashion.

19) The telephone response staffs of MGA, Servicer, and Default Aversion Contractor must have immediate and convenient access to data files, including on-line system access to MGA, Servicer, and Default Aversions Contractor imaged documents as necessary to research anticipated user inquiries. If a telephone inquiry cannot be handled to the satisfaction of the user at the time of the inquiry, the Servicer and Default Aversions Contractor must investigate and respond (e.g., call back) within 24 to 48 hours of the original request.

20) Inquiries that cannot be handled by telephone response must be handled via written correspondence using a process standard responding to 95% of inquiries within five business days of the initial request. The Servicer's and Default Aversions Contractor's system must retain a history of all inquiries and responses, even if the request is transferred to MGA for handling. MGA staff also must be able to update borrower or communications response/call log history records on the Servicer's and Default Aversions Contractor's system.

21) Appropriate statistical data/reporting identifying call volumes, types, and the above Servicer and Default Aversions Contractor performance levels in Sections 1.022, 3A10 through 3A14 for calls to the Servicer and Default Aversions Contractor must be maintained throughout the Contract period, and upon request, must be provided to CCI or designee. Reporting Frequency is still to be determined and additional discussions between Sallie Mae, SAC and MGA staff will help define frequency of statistical data reporting.

B. Data Center Operations and Management

- 1) Facilities:
 - a. The Servicer and Default Aversions Contractor must provide, staff, and operate facilities to satisfactorily house the staff, equipment, systems, office supplies, and processes necessary to process the volume of work and securely maintain the loan portfolio records of MGA.



- b. To the extent applicable, the Servicer's and Default Aversions Contractor's facility plans and budgets for establishing additional office/computing facilities specifically for the MGA Contract must be provided to the CCI or designee at Contractor's discretion.
- c. In all cases, the Servicer and Default Aversions Contractor must have sufficient computer processor power, disk storage, peripherals, and other hardware capacity to meet or exceed the data processing service levels in Sections 1.022, 3A10 through 3A14 for MGA and MGA clients.

2) System Operations Procedures/Documentation: The Servicer and Default Aversions Contractor must document, maintain, and adhere to sufficient, organized, up-to-date and fully documented systems operations procedures. All standard run schedules (daily, weekly, etc.) agreed to in Program Conversion (see Section 1.022, 2) must be prepared, implemented, and maintained for MGA and MGA client operations. Procedures must clearly identify program/system/data file error recovery and restart instructions for all jobs. Documentation of the above must be available for inspection at Contractor's Fishers, Indiana data processing facility at any time during the Contract.

3) System Back-up and Recovery: The Servicer and Default Aversions Contractor must develop, document, and perform frequent, periodic data file back-up procedures for transaction files and images, as well as systems and application software libraries. Secure off-site back-ups are mandatory for transaction and application software files. Back-up copies of system documentation, user manuals, and system operations manuals also must be stored off-site. Documentation of the above must be available for inspection at Contractor's Fishers, Indiana data processing facility any time during the Contract.

4) Data File/Record Retention:

- a. All electronically stored financial and non-financial transaction data/history must be available for on-line inquiry for active accounts and MGA clients as specified in Section 1.022, 3A9. After a loan is fully repaid or otherwise closed, the Servicer and Default Aversions Contractor may move the appropriate loan detail and history records off-line, subject to applicable Federal and State regulations. Transaction history after October 1999 is available online. History prior to October 1999 is available via a report that can be requested on-line. Since all information is available on-line, none of the MGA data is archived.
- b. The Servicer and Default Aversions Contractor must maintain information about MGA school and lender, as well as lender servicer clients on its system, including information provided by ED (e.g., ED identification numbers, demographic information, eligibility information, etc.).
- c. All hardcopy forms (or images) and other correspondence must be batched by account and stored indefinitely by the Servicer and Default Aversions Contractor to support future auditing of MGA after they are processed and imaged by the Servicer and Default Aversions Contractor (see Section 1.022, 3A17).
- d. All electronically stored data, hardcopy originals, and imaged documents are the property of MGA and must be returned to MGA in a mutually agreed upon format at the end of the Contract. While in the keeping of the Servicer and Default Aversions Contractor, all such materials must be stored in a fireproof room, vault, temperature/climate controlled room and/or containers having at least a two-hour fire resistance rating or the current industry standard.

5) Disaster Recovery/Business Continuity Plan:

- a. The Servicer and Default Aversions Contractor must have in place a fully documented Data Center Disaster Recovery/Business Continuity Plan that identifies back-up resources and/or facilities that can process the MGA systems under Contract in the event of a disaster. Depending on the severity of a disaster, back-up processing/facilities may take longer than 24 hours to be fully operational after losing the main processing facilities. The Contractor will make full recovery a top priority.



b. The Servicer's and Default Aversions Contractor's processing facilities must be protected from fire, power loss, flood, earthquake, vandalism, sabotage, and other physical or electrical damage to the extent possible with current data center construction and physical security techniques.

6) Data and System Security:

a. The Servicer and Default Aversions Contractor must provide the physical and logical system access controls and security necessary to ensure secure access by MGA and MGA clients for the functions described in this Contract. Physical and logical access controls for all Servicer's and Default Aversions Contractor facilities, equipment, and applicable systems must be addressed during Implementation Planning (see Section 1.022, 2A). The following national/international security standards and publications including, but not limited to, must be adhered to:

- National Standards: An Introduction to Computer Security", National Institute of Standards and Technology, Computer Resource Security Center (see <http://csrc.nist.gov/cc/index.html>)
- Interagency Guidelines Establishing Standards for Safeguarding Customer Information; Final Rule (12 CFR Part 30, et al)
- The Department of Health and Human Services and the Department of Social Security Administration (Section 45d(1)(6) of the Social Security Act and Privacy Act U.S.C. 552)
- Social Security Number Privacy Act 454 of 2004 at <http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-454-of-2004>
- Family Educational Rights and Privacy Act (FERPA) of 1974.
- Gramm-Leach-Bliley Act of 1999

The following security control requirements are a must:

- i. Management Controls
 - Risk Assessment of operational and technological risks, including threat identification
 - System Life Cycle Management
 - System Security Certification
 - System Security Accreditation and Assurance
 - System Security Plans
- ii. Operational Controls
 - User Administration, e.g., User Account Management, Password Management, etc.
 - Separation of Duties
 - Personnel Security
 - Security Awareness, Training, and Education
 - Contingency Planning, i.e., Business Continuity and Disaster Recovery Plans
 - Security Incident Handling
 - Physical & Environmental Security
 - Configuration Management
 - Media Protection, e.g., Media Labeling, Media Storage, Media Transport, Media Sanitization, etc.
 - System Security, e.g., Malicious Code Protection, Intrusion Detection Tools and Techniques, Spam and Spyware Protection, Security Alerts and advisories, etc.
 - Data Security, e.g., Data Input Restrictions, Data Processing Error Handling, Data Output Error handling, etc.
- iii. Technical Controls
 - Identification and Authentication Methods
 - Logical Access Controls, i.e., a technical means of controlling access



- System and Communication Protection, e.g., Security Function Isolation, Denial of Service Protection, Transmission Integrity and Confidentiality, Intrusion Detection etc.
- Change Control
- Cryptographic Technologies
- Audit Trails

b. The Servicer's and Default Aversions Contractor's application or data security software must provide logical access and security controls (terminal, operator ID, file level, data element level, and transaction or function level restriction capabilities) as necessary to prevent unauthorized access or updating of data.

- i. The Servicer and Default Aversions Contractor must provide proof to the CCI or designee that computer systems used for the processing, storing, and transmitting of MGA information have computer access security controls including a security policy, assurance, and documentation.
- ii. The Servicer and Default Aversions Contractor must provide annual testing results of all access controls and other security features to determine they are working properly. Annual certification must be provided, in writing, to the CCI or designee in the form of a SSAE 16 report. The cost of the annual certification is to be equally divided among all guarantor partners who formally agree to participate in the audit.
- iii. The Servicer and Default Aversions Contractor are responsible for costs associated with establishing and providing secure and acceptable methods of transmitting Michigan confidential/sensitive information over telecommunication devices, for example data encryption, SSL, Public Key Infrastructure, dedicated leased line, etc. The Servicer must use data encryption techniques whenever data is transmitted to and from a remote site with the exception of a dedicated leased line. The cipher strength must be 128-bit or better and the minimum speed must be 56,000 BPS.

c. MGA-approved requests for new/updated system access must be implemented within three business days of request receipt by the Servicer and Default Aversions Contractor. Within 10 days of each month end, the Servicer and Default Aversions Contractor must provide an access report to identify all authorized system users and the access rights each retains on the MGA database.

d. The Servicer and Default Aversions Contractor must have written Security Policy governing business conduct.

e. The Servicer and Default Aversions Contractor must provide security protecting the borrower's personal and financial information from unauthorized use and theft. Payer information is of high sensitivity and high security level. The Contractor's solution will be subject to review and approval by the Michigan Department of Technology, Management and Budget, Office of Enterprise Security, and Treasury's Office of Security. Security protecting personal and financial information includes, but is not limited to: SSN, transmission, software, hardcopy and Internet-based reporting. The Servicer and Default Aversions Contractor must develop a "security threat matrix" explaining what safeguards have been and/or will be put in place to mitigate security threats that arise when an organization handles transactions. This matrix must include the following components:

- Targeted system
- Results expected
- Security threat
- Mitigation strategy
- Probability of occurrence



- Identify any residual threat remaining. Describe security technology that Contractor uses to ensure data security. The security threat matrix will be developed during Implementation Planning (see Section 1.022, 2A5).
- f. The Servicer and Default Aversions Contractor must maintain and provide a recorded inventory of all magnetic and electronic media, or other type of data exchange in cases where long-term retention is required. The Services and Default Aversion Contract must make sure that no information is lost and no access is given to unauthorized persons.
- g. The Servicer and Default Aversions Contractor must define their procedure for destruction of Confidential Information during the processing of student loans under this Contract.

Upon termination or cancellation of the Contract for any reason, Servicer and Default Aversions Contractor must certify, in writing, to the SOM that the Servicer and Default Aversions Contractor has destroyed all State Confidential Information.

h. Incident Reporting

- i. The Contractor must immediately notify any security incidents and/or breaches to the CCI [see Appendix B, Form 4621 What is an Incident? (brochure)].
- ii. The Contractor must have a documented and implemented Incident Response Policy and Procedure.
- iii. The Contractor must have an incident handling form for consistent, repeatable process for monitoring and reporting when dealing with incidents.
- iv. The Contractor must have an incident response resource identified to assist users in handling and reporting incidents.
- v. Personnel trained in their incident response roles and responsibilities at least annually.

C. Information Technology Infrastructure

- 1) On-line connection between MGA office equipment (personal computers, printers, auto-dialers, etc.) and the Servicer's and Default Aversions Contractor's processing facility must be Internet-based. Procurement, installation, and on-going operating costs of this connection are the responsibility of the Servicer and Default Aversions Contractor.

The Servicer must assist MGA clients in the selection and set-up of computer equipment necessary to connect to its network. The Servicer must support dial-up, dedicated-leased, toll-free connection and/or Internet-based options. The Servicer must set up "fee for service"/equipment bill-back arrangements for MGA clients upon request of CCI or designee or change in federal requirements. Contractor must identify necessary equipment for network connectivity in proposal.

- 2) The Servicer is responsible for establishing the networking required to support the various kinds of computer interfaces used by MGA clients for both batch and interactive processing. This includes arranging for the appropriate level of service (dedicated, dial-up, LAN, etc.) for each client, including ordering, installation, and on-going maintenance. All dedicated circuits for MGA clients must be negotiated mutually by the Servicer, MGA, and the client. A minimum of four dedicated circuits is highly recommended but no longer necessary for interactive processing.
- 3) Costs incurred for development and usage of the above network for MGA clients will be the responsibility of the Servicer.



- 4) The Servicer and Default Aversions Contractor must establish network capabilities to allow transfer to either MGA or another Servicer and Default Aversions Contractor at the end of the Contract period.
- 5) Servicer and Default Aversions Contractor must implement/integrate MGA's current letter writing software with the MGA database. Servicer and Default Aversions Contractor must provide an IP address and system access to obtain information for the letters. The preferred method for this is through a web service or through open database connectivity. MGA currently utilizes a Department of Treasury Centralized Correspondence System to produce correspondence to the borrower. This system must interface to the Servicer's and Default Aversions Contractor's database in order to display borrower-specific information. The Servicer and Default Aversions Contractor must provide an approved interface method to allow Treasury's system to access the Servicer's and Default Aversions Contractor's database in real-time and batch mode. Examples of approved interface methods include web services, API, or direct access to the Servicer's database. As State of Michigan-interfaced systems evolve and the need for interface methodology evolves, the Servicer and Default Aversions Contractor must provide a mechanism for change.
- 6) Servicer and Default Aversions Contractor must implement/integrate MGA's current IVR and letter writer systems, or any future IVR or letter writer systems that may be used, with the MGA database. Servicer and Default Aversions Contractor must provide an IP address and system access for screen scraping (see Section 1.022, 3B6 for data/system security). Changes to the current support requirements may result in additional charges to MGA and are considered to be included in the 4,000 programmer hours per Contract year.
- 7) The primary requirement of the network is to support the on-line interactive and batch transfer requirements set forth in this Contract for student loan guarantee processing by the Contractor. The Servicer must attempt to resolve reported problems within the timeframes discussed in Sections 1.022, 3A10 through 3A14.
- 8) All equipment and implementation plans for the above systems and the incoming toll-free numbers, including any additional telephone sets, lines, or other equipment required within the MGA offices, must be integrated with the SOM's existing telephone network, subject to MGA approval and the requirements of the Michigan Department of Technology, Management and Budget (DTMB). Specifications for such equipment and its implementation must be approved by DTMB before ordering/installation by the Servicer. Additional charges to MGA may apply.

When MGA decides to take advantage of new technology (e.g., electronic signatures, equipment), new initiatives requiring system and/or procedural changes are developed (e.g., Master Promissory Note, blanket certificates of guarantee), or the current equipment/systems (e.g., imaging, auto-dialer, or automated telephone answering/routing system) need to be replaced or upgraded, the Servicer must be able to recommend, implement, and integrate the new technology/equipment/systems and procedures. Systems and procedures must be flexible to accommodate MGA clients' needs.

4. PROGRAM OPERATIONS

A. Borrower Account Maintenance

Borrower account maintenance includes all activities, data processing, and controls associated with maintaining loan account information for pending, approved, disapproved, denied, cancelled, in-school, in grace period, deferred, in forbearance status, in repayment, consolidated, delinquent, defaulted (including claims filed and paid), repurchased, rehabilitated, and paid-in-full/closed status loans. Transactions to be processed include, but are not limited to, the following:



- 1) The Servicer must process student status changes received via hardcopy and electronically (i.e. cartridge, Internet, etc.). MGA records/database must be updated/posted in real-time for updates received on-line, updates from overnight batches must be updated/posted within 24 hours, and updates received via mail/hardcopy form must be updated/posted within two business days of receipt by the Servicer from borrowers (which must be confirmed) or other authorized sources (lenders, lender servicers, and schools).
- 2) The Servicer must apply basic edits (more current information already on MGA files, obvious data errors, etc.) before applying changes to a borrower's record.
- 3) The Servicer must be able to accept/process financial and non-financial account maintenance information and provide an appropriate on-line electronic audit trail for any and all of the following input methods. See Section 1.022, 3A16 for audit trail requirements.
 - Hardcopy/mail data entry by the Servicer or MGA staff.
 - Electronic media (i.e., diskette, compact disc, or cartridge [formats currently in place or committed must be accepted by Servicer]). MGA will consider using the Contractor's format in the future. Describe the electronic formats Contractor can accept.
 - On-line/electronic transaction. Describe the Contractor's electronic capabilities (i.e., Internet, FTP, etc.).
 - Telephone call or facsimile from authorized source (see Section 1.022, 4A7 for authorized sources).
 - Database must provide on-line school enrollment history (by student, in chronological order) and other borrower account status/history information.
- 4) Deferments/Forbearances
 - a. The Servicer must accept and process forbearance and deferment information transmitted by lenders either electronically (i.e., cartridge, Internet, etc.) or by hardcopy document.
 - b. MGA will identify the required forbearance and deferment edits during Implementation Planning (see Section 1.022, 2A).
- 5) Student Enrollment Status Reporting

Most schools either report student enrollment information directly to the NSLDS or to the NSC. However, foreign schools continue to report enrollment information directly to MGA.

The Servicer must generate and transmit/mail Student Status Confirmation Reports (SSCRs) for those students in interim (in-school or grace) or in-school deferment status at schools that only report enrollment information to MGA. The enrollment verification requests must be generated by the Servicer based on the school's desired schedule, but no less frequently than semi-annually (April and October).

Although future formats may be revised/standardized with Servicer assistance, initially the Servicer must use MGA's existing format (electronic transmission [i.e., cartridge] or hardcopy). The Servicer must:

- a. Provide each school that does not report directly to NSLDS or NSC with its record of the "current" status on the MGA database for each student in that school for which verification is requested. Hardcopy and/or electronic records must be provided.
- b. Provide duplicate SSCRs, via DocumentDirect on the internet.



- c. Send follow-up/reminder notices to non-responsive schools at 60 and 90 calendar days after required response. Hardcopy and/or electronic notices must be provided upon request of schools.
- d. Notify MGA of schools that do not report within 60 days of the reminder notice. The notice must be repeated after 90 calendar days. Hardcopy and/or electronic notices must be provided upon request of the CCI or designee.
- e. Track responses on-line (see Section 1.022, 3A9); furthermore, the Servicer must research and resolve any information that is questionable or not provided. Update MGA's system with status information returned by the schools.
- f. Notify borrowers, schools, MGA, lenders and lender servicers of the changes made as well as NSC electronically, as MGA participates in the Total Enrollment Reporting Process (TERP). Notification must be via hardcopy and/or electronically upon request.
- g. Process SSCR files, including:
 - Receiving SSCR files from the NSLDS or a different third party national student loan status confirmation system
 - Processing NSLDS data on MGA's database
 - Resolving edits
 - Notifying lenders of any changes
 - If any unusual circumstances arise, researching and resolving all the issues.

6) NSLDS and NSC Reporting

ED mandates participation in the NSLDS. The Servicer must ensure MGA's compliance with all NSLDS submission requirements at no additional cost to MGA. In addition, if ED requires MGA to participate in the NSC process or any other process, the Contractor must provide all system support necessary for MGA to comply, at no additional cost to MGA (see Sections 1.022, 4H4).

Currently, MGA voluntarily participates in the NSC and pays processing fees directly to the NSC. The Contractor must provide data monthly to the NSC, at no additional cost to MGA. Specific requirements for providing data to the NSC will be finalized during Program Conversion planning (see Section 1.022, 2).

7) The Servicer must be able to accept changes/updates from any/all of the following sources with appropriate user level system security (see Section 1.022, 3A16 for audit trail requirements):

- MGA staff
- Borrowers/students
- Schools
- Lenders/Lender Servicers/Secondary Markets
- NSLDS
- NSC

During Program Conversion (see Section 1.022, 2), MGA will identify the various types of maintenance transactions and requests that can be accepted from borrowers, schools, lenders, etc. MGA also will identify which requests must be provided in writing versus those requests that may be submitted via telephone, Internet, e-mail, or facsimile.

8) The Servicer must retain on the MGA database the ED IDs of the original lender and the current lender, as well as the original and current lender's servicer of the borrower/note on the Servicer's system.



- 9) The Servicer must be able to update a lender's entire portfolio or selected loans from that portfolio to support loan sales. If a lender's entire portfolio is sold, the Servicer must have the capability to update all the lender's loans to reflect the new holder based on the selection of the lender number. Portfolio sales may be reported by hardcopy, cartridge, or electronic transmission. In addition, loans sold to ED through the ECASLA program, or other similar programs enacted by ED, must be noted on the Contractor's system. Servicer will no longer report information to NSLDS, but MGA will be able to run reports on sold loans.
- 10) The Servicer's system must be integrated to the extent that account maintenance and other file update transactions only need to be posted once to change all occurrences/uses of a particular data element for all MGA FFELP loan programs. Certain edits and other key functions also must be integrated. For example, if the Servicer segregates loan applications by loan type for servicing, a review of a Federal Stafford account/application must reflect whether another MGA Federal Stafford, PLUS, Grad PLUS, SLS, or Consolidation loan exists or has defaulted.

11) Customer Assistance Services for Non-Delinquent Accounts

The Servicer must provide customer assistance services for non-delinquent MGA borrower, parent, school, lender, and servicer clients. This includes making available a toll-free number, staffed by student loan professionals who may be located in multiple centers throughout the United States. These specialists, who have been trained and are knowledgeable about governmental and corporate policies and procedures, as well as communication skills, will be available to respond to telephone calls from 7:30 a.m. to 7:30 p.m., ET, Monday through Friday. Extended weekday and special Saturday hours will be scheduled during the peak processing season. In addition, an interactive voice response system must be available 24x7x365.

The Servicer is required to establish, on behalf of MGA, a sufficient number of dedicated, in-state and out-of-state incoming, toll-free telephone lines from MGA to the Contractor's processing office and from MGA's clients to the Servicer's office to handle, without obstruction or delay, electronically processed applications, enrollment and other data updates, and inquiries from applicants, borrowers, parents, schools, lenders, and other interested parties, subject to federal requirements. The Servicer's capacity of telephone lines, staff and equipment must be sufficient to handle (meaning retrieve from hold status and process the call) at least 90% of incoming calls per day within two minutes of when the call is first received.

The Servicer must perform functions related to education loan assistance support for clients through the life of the loan and will stringently monitor service levels daily. Servicer will have access to MGA's database and be able to update the records with all pertinent information on-line. Select MGA staff must have the same on-line update system capabilities. See Sections 1.022, 3A9 for system requirements, 3A19 and 1.042, 7.

The Servicer must provide customer assistance services to MGA, borrower, parent, school, lender, servicer, and secondary market clients and dedicate an experienced, professional level contract and operations manager/liaison to the MGA account.

- 12) The Servicer must perform Social Security Number (SSN) verification, as required by the U.S. Office of the Inspector General, and must search to find possible problems with SSNs of MGA borrowers. To ensure system compliance, the Servicer's system must contain the table of valid SSN ranges provided by the Social Security Administration and verify the SSNs on all new applications. All requests for SSN changes must be compared to the valid SSN table and result in error messages if they do not fall into the valid range.

Only authorized MGA staff may change/correct Social Security numbers on the MGA database. If necessary, the Servicer must receive written authorization from CCI or designee before changing the SSN on an MGA account.



B. Default Aversions

Lenders must request default aversion assistance when loans reach delinquency in accordance with federal regulations.

The SOM is taking into consideration two options for default aversion services as follows:

MGA has elected servicing Option 1, whereby Contractor will provide default aversion services, described in 1, 2 and 3 below.

At its option, MGA may select servicing Option 2, whereby MGA may perform all default aversions services in-house with a system provided by the Servicer or Default Aversions Contractor, described in 4 below.

1) General Requirements for Servicer

- a. The Servicer must accept and process all default aversions assistance requests in the format created by the student loan industry. Lenders must have the option of submitting these requests to the Servicer hardcopy or electronically. Electronic requests must be processed within one business day of receipt, and hardcopy requests must be processed within three business days of receipt.
- b. The Servicer must refer Default Aversions Assistance Requests (DAARs) to Default Aversions Contractor by the beginning of the next business day following electronic entry of default aversions information.
- c. The Servicer must support on-line processing and reporting by Default Aversions Contractor.
- d. The Servicer must document when the DAAR was received, returned to the lender, the reason for the rejection, and make documents available to Default Aversions Contractor.
- e. MGA staff must have the ability to update accounts on-line to a resolved status, when applicable.

2) General Requirements for Default Aversions Contractor

- a. The Default Aversions Contractor's system must include all items necessary to properly work a DAAR from a lender.
- b. The Default Aversions Contractor must perform the following:
 - i. Enter default assistance information onto their system on the date it is received from the Servicer.
 - ii. The day following receipt of the DAAR, the account must be loaded to a predictive dialer for 10 business days, or until contact is made with the borrower, whichever occurs first.
 - iii. When no contact is made with the borrower within 30 days from the receipt of the DAAR, attempt to locate a new address and telephone number.
- iv. When no contact is made with the borrower in 60 days from the receipt of the DAAR, contact all references. When unsuccessful at contacting references by telephone, send correspondence to the reference(s) requesting them to contact the Default Aversions Contractor with information on the borrower.
- v. Upon receipt of a DAAR, send correspondence to borrowers and cosigners, when applicable. The format of the letters will be discussed during Implementation Planning (see Section 1.022, 2A).



- vi. Send correspondence to the borrower at 10 days after DAAR is filed and at 30-day intervals thereafter until the account is satisfactorily or unsatisfactorily resolved. The content of the correspondence must get progressively stronger as the account is aged, in an attempt to urge the borrower to make payments. Letters must be reviewed and approved by CCI or designee prior to use.
- c. The Default Aversions Contractor must automatically generate and mail all default aversion letters to borrowers whose addresses are coded as valid or "unknown". This includes letters manually requested by MGA staff and letters systematically generated from the default aversions system.
- d. The Default Aversions Contractor must have on hand a supply of all deferment and forbearance forms which are to be mailed to the borrower upon request.
- e. The Default Aversions Contractor must support an automated follow-up system for borrowers who fail to make payments or send deferments/forbearances as promised.
- f. The Default Aversions Contractor must provide, at no additional cost, skip-tracing services on all DAARs in accordance with federal regulations and laws and in accordance with the Contract. At a minimum, those activities must include:
 - i. Make an initial attempt to the borrower's most recent telephone number of record on MGA's database to ensure the account actually is a skip record and to obtain any useable information to locate the borrower. Contractor must begin skip-tracing activities within two business days of receipt of notification from the lender or MGA and begin skip-tracing activities within two business days of returned mail receipt.
 - ii. Call directory assistance.
 - iii. Use Internet resources.
 - iv. Contact all the schools the borrower attended to determine if they can provide more recent information.
 - v. Attempt to contact, both through letters and telephone calls, all of the references and any cosigners on the borrower's loan(s).
 - vi. Contact credit bureaus as specified by Contract Compliance Inspector or designee.
 - vii. Conform to federal regulations regarding skip-tracing activities and implement process/procedure enhancements as required. (See Section 1.022, 1B)
- g. If the Default Aversions Contractor is unable to locate the borrower within 10 business days using the methods identified above, Contractor must continue skip-tracing efforts for an additional 10 business days with at least one contact attempt per day.
- h. The Default Aversions Contractor must provide a dedicated screen that shows both before and after default, all "bad" addresses and the date those addresses were listed as "bad."
 - i. The Default Aversions Contractor must provide access to archived skip-trace information (account history, etc.) within five business day of request receipt (see Section 1.022, 3A16b). MGA will have access to the EAGLE loan guarantee system via on-site workstations enabling MGA to view skip-trace information in "real time" (less than one business day).
 - j. The Default Aversions Contractor must remove accounts from active status and place them in unresolved status when a Notice of Default is purchased.
 - k. The Default Aversions Contractor must track and retain for future retrieval all default aversion activities from the receipt date of the request for assistance until the delinquencies are resolved or MGA purchases the loan(s) as a default. All activities must be retained by the Default Aversions Contractor indefinitely.



- I. The Default Aversions Contractor must process and store Default Aversions Fee Billing as required by federal regulations and as agreed with the CCI or designee during Implementation Planning (see Section 1.022, 2A).
 - m. The Default Aversions Contractor must provide CCI or designee an overview of the borrowers contained within the cohort year by the 5th of every month. The overview will determine the year-to-date Cohort Rate, Trigger Rate, and Satisfactorily Resolved (SAT) Rate. In addition, the overview must include target goals for the Cohort, Trigger and SAT rates. The target goals will be mutually agreed upon between the CCI or designee and the Default Aversions Contractor at the beginning of each cohort year.
 - n. The Default Aversions Contractor must track the borrower's statuses (paying, paid-in-full, deferment, forbearance, delinquent claim) at the end of each cohort year. A comparison of the report status and the status obtained six months later must be prepared and continue at six-month intervals until the account is paid-in-full. The Default Aversions Contractor must submit a report to the CCI or designee documenting if the borrower remains in good standing. The Default Aversions Contractor must submit overall statistics reflecting successes and failures at six-month intervals.
 - o. The Default Aversions Contractor must provide complete access to its automated default aversion system, so that all software, computer processing, and information needed to perform and/or oversee default aversions is available to MGA staff. MGA staff must have all-inclusive inquiry and view access on all borrower accounts. Update capability also must be available for MGA staff.
 - p. The Default Aversions Contractor must have the appropriate security clearances for MGA and Default Aversions Contractor users who have inquiry and/or update capability (see Section 1.022, 3A9).
 - q. The Default Aversions Contractor must comply with the following: Gramm-Leach-Bliley Act (GLB), Fair Debt Collection Practices Act (FDCPA), Red Flag Rules, and state law at no cost to MGA (see Section 1.022, 7A).
 - r. The Default Aversions Contractor must image or store all free-form letters sent to, and all deferment and forbearance forms received from, the borrower for future retrieval by the Default Aversions Contractor or MGA staff (see Section 1.022, 3A17).
- 3) General Requirements for Both Servicer and Default Aversions Contractor
 - a. The Servicer must have the ability to exchange data with the Default Aversions Contractor and store for future on-line retrieval any changes made to the borrower's account. Changes include, but are not limited to, the borrower's, co-signer's and reference's name, address, telephone number, etc. (see Sections 1.022, 3A16, and 1.022, 2A).
 - b. All Contractors must age all DAARs on the assumption that no further payments were made by the borrower to the lender. Aging must begin with the date default aversions assistance is required by federal regulations and continue through the cure of the delinquency or when the account is purchased as a default by MGA.
 - c. The Servicer must coordinate information from the Default Aversions Contractor's system and the Servicer's system for update and for reporting to the federal government in accordance with the federal regulations and laws.



- d. All Contractors must track each DAAR and have in place a mechanism to allow for reimbursement from/repayment to ED in compliance with federal regulations with regard to Default Aversion Fee billing and rebates.
- e. Costs for interfacing with the Servicer and Default Aversions Contractor must be included in the Price Proposals.

4) System Requirements for Default Aversions System

- a. Contractor Servicing System being provided to MGA:

The Borrower Pursuit System (BPS) is a proprietary graphical user interface (GUI) subsystem of the EAGLE System. BPS is designed to track delinquent student borrower loan data. BPS is specifically designed and developed to provide default aversion assistance services on behalf of student loan guarantors like MGA. BPS maximizes the productivity of the default aversion staff assisting to optimize the amount of successful student borrower contacts and satisfactorily-resolved delinquent accounts.

BPS allows, default aversion users have 'real-time' access to, and retrieval of, essential demographic, loan, and archived historical account data from the EAGLE System which is displayed automatically and organized for the most effective and efficient use of time.

BPS provides instant access to a comprehensive and chronological log of default aversion-related activities and records including correspondence sent and received. The BPS user can maneuver through BPS in a 'point-and-click' fashion quickly collecting, sorting, and updating student borrower demographic and student loan information culled from EAGLE.

BPS interfaces seamlessly with the EAGLE System and other technologies such as automated telephone dialing systems, digital fax servers, and E-mail servers. Documentation recorded on BPS is also applied in 'real-time' to the EAGLE System.

BPS provides for efficient default aversion activities; specifically BPS:

1. Automatically determines a student borrower's deferment and forbearance eligibility based on disbursement dates and qualification criteria via embedded 'decision trees';
2. Enables a user to quickly and accurately qualify a student borrower for a deferment or forbearance request by using embedded 'decision trees' prompting the user with pre-qualifying questions to be presented to the student borrower including deferment and forbearance eligibility requirements, certification criteria, and time-limits;
3. Displays key data elements from EAGLE in a user-friendly intuitive layout;
4. Provides 'online help' via the embedded Summary Tips that serves as a quick reference guide when performing specific tasks. The Summary Tips also include task descriptions, window descriptions, field definitions, macro definitions, report descriptions, and a glossary as well as step-by-step instructions related to performing a specific task;
5. Records all account-related activities in 'real-time' to the EAGLE System;
6. Allows users to record student borrower 'promise-to-pay' and other delinquency resolution information;
7. Enables users to document the student borrower's native language (Spanish, French, German, etc.) to help customize telephone outreach and letter communication;



8. Records the number of activities performed relating to each Default Aversion Assistance Request (DAAR) such as telephone activities attempted, telephone contacts, and letter correspondence sent and received;
9. Interfaces with automated telephone dialing systems such as progressive and predictive dialers;
10. Stores multiple addresses including primary, alternate, and electronic addresses as well as place of employment (POE) information associated with a student borrower.

Mail can be generated to any of the addresses stored on BPS including E-mail addresses. Telephone, fax, cellular, and pager numbers are also archived on BPS. Storage and accessibility to this data ensures that the most current demographic information is available to the user. The 'date of last update' is provided for each address and telephone number denoting the current status. The 'Organizations' tab of BPS provides contact information relating to key stakeholders such as school(s), lender(s), and servicer(s) associated with the student loan and student borrower.

The 'Special Cases' tab of BPS provides information required for bankruptcy, death, disability, school closure, false certification, and legal representation. For example, if a student borrower states that he or she filed bankruptcy, a click on the bankruptcy section of Special Cases tab automatically prompts a drop-down menu soliciting the required information such as bankruptcy chapter, case number, attorney information, date filed, and date of the first meeting of creditors. This guides the user to obtain the required information during telephone interaction.

An "Important Notes" field on BPS changes color as information is entered alerting users of a critical status. This field serves to signal the user of specific comments or dynamics relating to a student borrower such as the most-convenient-time-to-call, permission to discuss the account with a third-party, or a specific pending issue. Sending mail (e.g., deferment and forbearance request forms) directly to the student borrower is automated with BPS possessing the ability to generate letters via direct and electronic mail (E-mail). Additionally, letters or forms can be transmitted directly to any personal computer (PC) or systematically faxed to the student borrower via a 'networked' digital fax server. Many student borrowers prefer critical information to be delivered to them via E-Mail and fax instead of direct mail; therefore, the use of E-Mail and fax correspondence often reduces turnaround time.

BPS' 'History' tab is a notable feature, a mouse-click on the 'History' macro displays all DAAR activities performed, including student borrower telephone contacts, attempts-to-contact, letters-sent and -received as well as deferment and forbearance information. The user can select how the account history is displayed such as in sequential order (most recent event last) or reverse chronological order (most recent event first). The BPS History tab can also be filtered to customize the display to read all activities, recent activities, telephone contacts, letter correspondence sent, deferment information, personal status information, or letter correspondence received.

- b. The system must automatically generate and the system provider will mail all default aversion letters to borrowers whose addresses are coded as valid or unknown for any letter, whether manually or systematically generated.
- c. The system must track and retain for future retrieval all default aversion activities from the receipt date of the request for assistance until the delinquencies are cured or MGA purchases the loan(s) as a default. All activities must be retained indefinitely.
- d. The system must process and store Default Aversions Fee billing and rebates as required by federal regulations and as agreed with the CCI or designee during Implementation Planning (see Section 1.022, 2A).



- e. The system must have the appropriate security for MGA and Default Aversions Contractor users who have inquiry and/or update capability (see Section 1.022, 3A9).
- f. The system must comply with the following: GLB, FDCPS, Red Flag Rules, and State law at no cost to MGA (see Section 1.022, 7A).
- g. The system must age all DAARs on the assumption that no further payments were made by the borrower to the lender. Aging must begin with the date default aversion assistance is required by federal regulations and continue through the cure of the delinquency or when the account is purchased as a default by MGA.
- h. MGA staff must have the capability to run ad-hoc reports from the system. Please provide specifics of how reporting feature for proposed system works.
- i. In-depth system training must be provided upon implementation should MGA decide to bring all or certain default aversions activities in-house. Initial training should be on-site at MGA. Additional training would need to be provided for system and regulation changes as needed, and can be conducted through webinars. Skill training on collection techniques is not provided by the Contractor.

C. Claims Processing

Lenders file default claims in accordance with federal laws and regulations. For this Contract, MGA will perform all operational functions associated with the claim review and purchase processes; however, MGA reserves the right to have the Servicer perform these functions, at MGA's discretion. Should MGA choose to have the Contractor perform this service, Contractor will work with USA Funds or another Contractor-serviced guarantor to establish a subcontracting agreement and for an orderly transition of the claim review process. Additional charges will apply as identified on Attachment 5 to this Contract.

- 1) The Servicer must accept claims submitted by lenders electronically or via hardcopy. Claims submitted via hardcopy are entered onto the system within two business days after receipt while claims submitted electronically must be entered within one business day after receipt.

The Servicer must provide lenders and/or servicers interested in filing electronic claims with file specifications.

- 2) The Servicer must provide an automated claim review system for claims submitted electronically. The Servicer's system must automatically review the lender's conversion to repayment, due diligence, and timely filing and payment history information as the claim is entered. In addition, the system must recommend claim disposition.
- 3) The claim review system must, at a minimum, perform the following:

- a. Update the status of MGA's database when claims are purchased and prevent automatic approval of future loans for defaulted borrowers.
- b. Edit basic claim information based on critical data elements and type of claim submitted. Edits must include the following, but are not limited to:
 - i. SSN match (based on the Social Security Administration valid number directory and MGA's database)
 - ii. Lender and/or loan identification number(s) do not match MGA database
 - iii. Type and/or amount of claim does not match MGA database
 - iv. Loan not guaranteed by MGA
 - v. Date of last enrollment date does not match MGA database



- vi. Status (i.e., repayment) does not match the MGA database
- vii. Loan is paid-in-full, canceled, defaulted, or the guarantee has been withdrawn
- viii. No DAAR filed, unless not required per federal regulations
- ix. All edited claims must be returned to the submitter within one business day. The returned claim must include the reason for return and resubmittal instructions.

c. An on-line tracking system that will maintain a record for each claim received. In addition, MGA staff must have the means to add and view relevant borrower information.

d. MGA staff must be able to perform essential functions on-line, e.g., reassign claims (individually or mass reassignment), calculate number of days between collection activities to verify timely due diligence, etc.

e. Randomly assign claims to MGA claim review staff according to the data entry order of the claims.

f. Automatically generate and mail default warning letters to the borrower and cosigner(s). In addition, the system must record all notices in the individual borrower's default record (see Sections 1.022, 3A18 and 3A20). Letters must not be generated when the claim is submitted for reason of death, disability, ineligibility, school closure, false certification, fraud, identity theft or bankruptcy.

g. Automatically schedule purchase dates when the claim review code and purchase transaction data is entered into the system. Based on federal regulations, some purchase dates may be pended into the future, however, all other claims must be scheduled for purchase.

h. Process multiple reinsurance rates accurately. For claims that pass the claim payment approval edits, the Servicer's system must identify the appropriate reinsurance percentage applicable to the loan being purchased as a claim. MGA staff must be able to correct the interest rate at the time of purchase.

i. Automatically calculate interest due and interest penalties caused by due diligence violations, to the lender through the date permitted by federal regulations. MGA staff must be able to specify a maximum number of days of interest to be purchased and the dollar amount of interest to be paid.

j. Allow reselling of defaulted loans to lenders when approved by CCI or designee. Documentation of the sales must be recorded on-line. The system must:

- Identify the amounts that must be received from a lender for repurchase, rehabilitation, or consolidation of the defaulted loan.
- Make all necessary adjustments in reports filed with credit bureaus and ED.

4) The Servicer's system must allow MGA to manually enter hardcopy claims into the system.

5) The Servicer must provide MGA staff with full access to its computer system. The Servicer's system must be designed for efficient entry and update of claim data. (see Section 1.022, 3A9).

6) The Servicer's system must automatically record the purchase, update the loan status, assign the loan to the appropriate collector (or collection agency/subcontractor), and generate notification to the borrowers and collection agency/subcontractor, if applicable, when MGA staff perform on-line purchase of claims.

7) The Servicer must prepare, and submit to MGA, a weekly report detailing claim amounts to be purchased and interest due by note, subtotalized by lender for verification and processing of claim payments. This report must be received by MGA no later than the first business day of the week following each purchase.



8) The Servicer must track MGA's reinsurance rates and report them to the CCI or designee. This is necessary to calculate the amount of collections that can be retained by MGA.

D. Borrower Delinquency/Default Self-Serve Internet Site

- 1) The Servicer must provide access to a Borrower Delinquency/Default Self-Serve Internet Site for all MGA borrowers whose status is delinquent or default. The Internet site must include, but is not limited to:
 - a. Log on availability for all delinquent MGA borrowers as well as those whose loans are in default
 - b. Account profile information, including account number, name, address, and home telephone number
 - c. Ability to change personal information, if necessary
 - d. When the borrower is in a delinquent status, provide them with:
 - i. The name and contact information of their lenders/Contractors
 - ii. Total outstanding balance of all delinquent loans
 - iii. Total delinquent amount of each individual delinquent loan
 - iv. Options for bringing the account current that include the following:
 - (a) Make a promise to pay – forwarding information to each lender and/or lender/Contractor
 - (b) Information on how to postpone a payment through any deferment/forbearance for which the borrower may be eligible
 - (c) Information on loan consolidation
 - e. When a borrower is in a default status, provide them with:
 - i. Current outstanding balance
 - ii. Payoff information
 - iii. Current location of account
 - iv. Payment summary, including the ability to view their payment history
 - v. Ability to link to MGA payment site, including passing authentication data
 - f. Individual loan information, which includes disbursement date, disbursed amount, lender/Contractor, school attended, and loan identification number

A licensing fee of \$40,000.00 per year is charged for the self-service internet site, see Attachment 5.

E. Auto-dialer – Reserved

F. Collections

Currently, MGA staffs and operates a unit to collect on defaulted loans for the first 180 days of delinquency. If MGA is unsuccessful in collecting on the debt by the 181st day, or there is a break in payments being received of 180 days, the Servicer must collect on the account (i.e., internal or external collection agency/subcontractor of their choosing). CCI or designee reserves the right to change the timeframe for keeping accounts in-house. The Servicer will be given 30-calendar days' notice if a decision is made to maintain accounts for a longer or shorter period of time.

The Servicer is providing to MGA the use of the Collection Automated Processing System (CAPS) as a proprietary subsystem of the EAGLE system. Accounts must be maintainable from either system (e.g., updates to a borrower's name and/or address in one system should be updated automatically in the other system), account balances must match, etc. (see Section 1.022.3b4a).



As an integrated part of the Servicer's system, MGA may request modifications to CAPS. Estimates of the cost of such modifications will be provided to MGA for review and approval. If approved, completed projects will be billed to MGA using the actual man hours expended to complete such projects, multiplied by the programming hourly rate of \$105.00 per hour. If U.S. Department of Education requires a modification to CAPS to comply with changes to FFELP regulations governing default collections, Sallie Mae is responsible for the cost.

1) Internal Collections

The Servicer must provide a Windows-based (or equivalent) computer software/system to support MGA's collection activities as required by ED, including:

- a. Full access to an Internet based collection system, allowing MGA staff to perform collections, must be available and all collections activities must be retained on-line on MGA's database for future retrieval and reporting. The Servicer's collection system also must provide automated support for MGA staff to follow up on "broken promises." Multi-level security access to ensure that only authorized staff has access to this information is required (see Section 1.022, 3A9).
- b. Automatic posting of overpayments to the billing system and processing of refunds following MGA's refund policy.
- c. Automatic due diligence audits on collectors (internal or external subcontractors) to ensure compliance with federal post-claim due diligence requirements.
- d. Display historical information in reverse chronological order, in addition to chronological order by account number (see Sections 1.022, 3A16b, 3A19 and 3B4).
- e. Automatic linking of two or more defaulted loans for the same borrower, including linking existing defaulted loans to those that are on the system. MGA staff must have access to perform this function on-line.
- f. A collection management system for use in evaluating staff performance. The ability to monitor staff in real-time as well as evaluation information must be available on-line the following business day. This system must include, but is not limited to:
 - i. Number of incoming and outgoing calls processed, by individual staff person(s)
 - ii. Activity performed on individual accounts by individual staff person(s)
 - iii. Daily number of new accounts assigned to each individual staff member
 - iv. Number of accounts closed and the reason for closure for each collector assigned work queue
 - v. View historical system statistics in graphical form so analysis of the data in the system database can be performed
 - vi. Detailed reporting capabilities can be provided on an ad hoc basis after review with MGA.
- g. A separate on-line investigation tracking module within the collections system. The module must be based on individual accounts and include the following:
 - i. Detailed chronological skip-tracing activities, including contact with references, employers, etc. (written and/or verbal)
 - ii. Telephone attempts/contacts made
 - iii. Correspondence generated and sent directly to the defaulted borrower
 - iv. Wage garnishment activities.
- h. Retaining detailed computerized history of all activities performed including demographic changes, collection activities, etc. (see Section 1.022, 3A16).



- i. Ability to queue letters from the system. The Servicer must generate and mail all letters requested by MGA collection staff. Times and intervals of mailing will be specified by MGA or as defined by federal regulations.
- j. Automatic production and mailing of delinquency notices on a pre-determined day after a missed payment and automatically queue the account to the collector. MGA staff, using either standard or customized text will compose these letters. The Servicer will mail these letters within one business day of request. In addition, the Servicer's system must be able to automatically generate monthly activity statements to defaulted borrowers as specified by MGA in a letter table.
- k. Automatic creation, printing and mailing of MGA composed and standardized form letters approved by the CCI or designee as follows:
 - i. Letterhead and envelope used must include MGA logo and identifier (see Section 1.022, 1A).
 - ii. CCI or designee will identify during Implementation Planning, Section 1.022, 2A, letters to be automatically generated.
 - iii. Letters generated by the Servicer's system (either automatically or upon request) must be mailed from the Contractor's location.
 - iv. All letters generated by the Servicer or generated at the request of Contractor or MGA staff must be entered automatically in on-line history as referred to in Section 1.022, 3A16b of this Contract.
 - v. The Servicer must automatically generate monthly statements within five days of the billing cycle and mail them to defaulted borrowers once repayment schedules have been established on the system or as requested by MGA staff. The monthly statements must include a bar code to allow for automated payment posting. The bar code must include the borrower's Social Security number and/or specific account number and the scheduled payment amount. The amount must be changeable to allow for different payment amounts that the borrower might remit.
 - vi. All correspondence generated by or via the Servicer's system must be mailed by the end of the following business day. Such mailed correspondence will be billed monthly to MGA at the rates provided in Section 1.062.2.B.
- l. Allowing MGA users to define and process a variety of formats for importing new business into the collection system and updating and/or reporting changes to accounts. Describe importing methods/formats available.
- m. Providing an import/export module that allows users to read, report, post, translate, store and total (or sum) the payment information in the system for each borrower account. This module will include a method to identify any balance adjustments made to an account for principal, interest, collection costs, or other adjustments that may be needed on a borrower's account.
- n. The Servicer's system must automatically assign accounts to MGA collector(s) based on established assignment rates approved by Contract Compliance Inspector or designee as accounts are purchased so all telephone calls and collection activities for a given account are routed to the same collector. MGA must have on-line capability of reassigning account(s). (See Section 1.022, 3A9.)
- o. The Servicer's collection system must interface with MGA's predictive dialer as follows. (Currently, MGA is using a hosted dialer through IAT):
 - Telephone calls/attempts and letters generated from the predictive dialer tracked and retained on the collections system
 - Document and update information from predictive dialer as collectors work accounts



2) General System Requirements

- a. The Servicer's system must:
 - i. Track and retain repurchase, rehabilitation, and consolidation information.
 - ii. Allow for ease in moving from screen to screen. The system must transfer borrower Social Security number or account number information from current screen to subsequent screens.
 - iii. Interface services of third-party vendors (e.g., credit bureaus) and seamlessly integrate these services into the Servicer's main database through on-line menus available to MGA staff.
 - iv. Automate methods and criteria for placing and/or removing accounts to/from MGA and collection subcontractor's databases. This system must be approved by CCI or designee during Implementation Planning, Section 1.022, 2A.
- b. The Servicer must interface with ED, the IRS, collection agencies/subcontractors, and other entities or agencies as required.
 - i. The Servicer will be responsible for all transactions with other collection agencies/subcontractors, if applicable.
 - ii. The Servicer must have an automated interface with collection agencies/subcontractors to allow information to be exchanged between their systems and the Contractor's system.
 - iii. The Servicer must program, test, and implement all collection subcontractor(s) interface programs, as necessary. The interfaces must include account placement (including all information needed to collect effectively), closure and reassignment, balance adjustments, payment processing, address updates, inventory reconciliation, and account status changes. Information must be exchanged via tape or electronic transmission, at CCI's or designee's option.
 - iv. CCI or designee will establish parameters for account selection. Parameters shall be flexible/changeable.
 - v. Using selection criteria mandated by ED, the Servicer must interface with collection agencies/subcontractors for turnover (subrogation) of defaulted accounts to be assigned to ED. Accounts designated for mandatory assignments are selected annually as required by ED. Collection agencies/subcontractors must close accounts within 24 hours of notification of manual assignment.
 - vi. The Servicer must interface with ED for turnover of all loans discharged due to permanent and total disability on a monthly basis as required by ED. Servicer will provide a download of accounts to be assigned to ED based on criteria approved by CCI or designee.
 - vii. The Servicer must interface with Education Credit Management Corporation (ECMC) for turnover of all loans whose borrower has filed an adversary bankruptcy proceeding on a monthly basis. Provide a download of accounts to be assigned to ECMC. Accounts to be sent to ECMC will be identified by a predetermined status entered on the database.
 - viii. The Servicer must make available the services of an Administrative Law Judge (ALJ) needed to conduct Administrative Wage Garnishment hearings for those accounts collected in-house. These hearings are conducted via conference call between MGA staff, the ALJ, and the borrower. Hearings are conducted as needed. Documentation is sent to the ALJ.



one week prior to the hearing. Negotiations for fees paid to ALJ will be done by the Servicer and the CCI will approve such charges for ALJ services provided on behalf of MGA borrowers . Charges for ALJ services will be paid by Contractor and reimbursed by MGA.

- ix. Servicer's database must provide a cross-reference for name changes, and this information must be accessible from the collection system.
- x. MGA's automated Interactive Voice Response (IVR) system and Correspondence Application system must be integrated with the MGA database/system. Any changes made to the database/system must be communicated to CCI or designee a minimum of 30 calendar days before the change will be made to ensure that programming can be secured from IVR and Correspondence Application contractors. (See Section 1.103 for IVR specifications.)
- xi. The Servicer must integrate with any auto-dialer system in use by MGA in-house collections staff (daily upload and download). This system must be integrated with the Servicer's systems/databases during Implementation Planning (see Section 1.022, 2A).
- c. In the event that MGA assigns accounts to the Servicer for collection, the Servicer's responsibilities will consist of computer and administrative support activities. Activities must include, but are not limited to:
 - i. Contractor must use a Rehabilitation Recovery strategy for collections, or whatever method is recommended by ED, to maximize MGA's revenue and collections. A description including technology used to manage the collection portfolio and how it will use that technology to enhance the recovery rate must be included.
 - ii. Contracting with an appropriate number of collection agencies/subcontractors (if applicable) necessary to maximize effectiveness.
 - iii. Accepting full responsibility to ensure that all collection activities performed on behalf of MGA follow federal due diligence requirements in the collection of loans, as well as all federal and state laws, rules, and regulations governing collections. In addition, compliance with the Federal Debt Collection Practices Act and Gramm-Leach-Bliley legislation must be ensured.
 - iv. Overseeing performance of external collection agencies. All collection tools available under federal regulations, including rehabilitation, consolidation, and administrative wage garnishment must be fully utilized by external collection agencies.
 - v. Providing strategic placement logic, proactive account management, and enhanced reporting of collection activities and results.
 - vi. Evaluating collection subcontractor performance (if applicable) through the use of varied performance measurement tools selected by Servicer and agreed upon by CCI or designee. Describe/define the qualitative and quantitative measures Contractor will use.
 - vii. Adjusting account placements quarterly based on the results of the collection subcontractor performance.
 - viii. Certification of all loans eligible for federal offset based on criteria provided annually by ED.
 - ix. Tracking and retaining State and Federal offsets on MGA database and collection system.
 - x. Performing all credit bureau reporting on a monthly basis as required by federal regulations.



- xi. Providing post-claim assistance to effectively resolve disputes between borrower(s) and external collection agencies. Assistance includes but is not limited to accepting and responding to all correspondence and telephone inquiries from defaulted borrowers assigned to external collection agencies.
- xii. Performing on-site compliance reviews of collection subcontractor(s) on an annual basis. Criteria for compliance review are based on federal regulations and other regulations as detailed in Section 1.022, 4F2cii. A detailed written report must be provided to MGA within 15 days of completion of the review.
- xiii. Ensuring all activities entered on MGA's database is performed by the Servicer, i.e., not by external collection agencies, if applicable.
- xiv. Costs for all Servicer's default/collection staff activities as detailed above are to be bid separately as indicated in the Price Proposal, Appendix A, Attachment 3. Costs must be based on a Rehabilitation Recovery Strategy. The Servicer is responsible for paying all collection subcontractor(s) fees.

d. The Servicer must notify MGA, and/or external collection agencies when account(s) are closed. If an account assigned to a collection subcontractor is closed (e.g., paid-in-full, subrogated, etc.), a tape or FTP (as defined by collection subcontractor) must be generated by the Servicer and forwarded to the appropriate entity to close the account. Notification must be on the same business day of the transaction that closed the account. The collection subcontractor must close the account within two business days. In the reverse, Servicer/collection subcontractor closes an account for whatever reason; they will create a tape or FTP transaction and send it to the Servicer to automatically update the MGA account to the new status.

e. The Servicer must retain all borrower data in accordance with federal regulations (see Section 1.022, 3B4).

f. The Servicer must generate and forward on a monthly basis a list of all accounts that are paid-in-full. The listing must include fields showing involuntary federal offsets and State of Michigan offsets of tax refunds and vendor payments. In addition, the Servicer must create, and forward to MGA for printing paid-in-full letters for all borrowers who have paid their account in full. The letters must be available to print at the MGA site within five business days of the end of each month. (See Sections 1.022, 1A and 1.042).

g. Federal government agencies (i.e.: Internal Revenue Service, ED) often facilitate a transfer of information as a way to assist in resolving accounts. The Servicer must have the capability to receive and process this information, and subsequently release that information to MGA. The current process incorporates the use of the SAIG Mailbox. Responsibilities include but are not limited to:

- i. The Servicer is responsible for obtaining all required fields and criteria used to provide this information to ED.
- ii. Information will be sent on a periodic basis, as specified by ED.
- iii. The Servicer must ensure that all information received from ED is held under strict security as required by ED, the Department of Health and Human Services and the Department of Social Security Administration (Section 45d(1)(6) of the Social Security Act and Privacy Act U.S.C. 552).
- iv. The Servicer must erase all electronic files and shred or burn all paper records as required by ED, the Department of Health and Human Services and the Department of Social Security Administration.
- v. Maintain and report to ED as required on NDNH statistics by tape, FTP, etc.



- vi. The Servicer must provide security awareness training to all their employees who have access to the student loan data, on the requirements of the GLB, and other policies regarding the use of sensitive personal data, as well as penalties for unauthorized use or disclosure of the data.

3) Payment Processing

- a. The Servicer must have the capability to provide payment processing for all internal and external MGA payments. As part of this process, the Servicer must perform the following:
 - i. Provide a separate Post Office box for all MGA payments received from MGA internally held accounts.
 - ii. Post all payments received to the MGA collections system the date the payment is received. The Servicer will be responsible for transferring MGA's collection dollars daily no later than midnight on the day of receipt. MGA's share will be gross recoveries. No fees will be deducted from the deposit made to MGA's account.
 - iii. Accept the following payment types: currency, check, credit card, debit card, or e-check through the Centralized Electronic Payment Authorization System (CEPAS) in use by the State of Michigan, or any new system that is in use by MGA. Please note that payments received through CEPAS will automatically be deposited into MGA's account and, a payment-posting file will be provided to the Servicer for posting to the account.
 - iv. Match daily deposits to daily system posting report. Variances must be researched and rectified by Servicer. Monthly cash reconciliation must be performed by the Servicer to guarantee an action has been performed on all funds received. Outstanding balances are tracked and aged to ensure timely resolution. Servicer must follow generally accepted accounting and auditing procedures.
 - v. All account adjustments (payment breakdown, payment effective date, etc.) are the responsibility of the Servicer. All adjustments will be tracked and monitored against turnaround times agreed upon during Program Conversion planning, Section 1.022, 2.
 - vi. If the MGA Collections Module is separate from the MGA database a remittance file must be created by the Servicer and loaded to the MGA database daily.
 - vii. Each external collection agency subcontractor is responsible for transmitting a remittance file and matching funds to the Servicer daily. The remittance file(s) must be released for posting to the collection system by 12:00a.m. ET the day received.
 - viii. Servicer will be responsible for payment of collection subcontractor(s) fees. This includes all fee adjustments required to correct invalid retention of fees by collection subcontractor.
 - ix. The Servicer must process all payments received on the date of receipt. The Servicer will be responsible for processing all FFELP and FDLP loan consolidation payment transactions, Rehabilitation repurchase and other repurchase transactions, the same day they are received. Rehabilitation repurchase and regular/standard repurchase requests will be obtained from the CCI or designee.
 - x. The Servicer must process and post all offset transactions received from ED (in the format they require) on the date of receipt.
 - xi. The Servicer must identify in the system payment history record on MGA's database the source of all payments received. This information must be readily visible, and identify the location of the account at the time the payment was posted, e.g.:



- (a) Direct collection from the borrower by MGA
- (b) Direct collection from another collection subcontractor (identify specific agency)
- (c) Collection via Treasury offset of State of Michigan income tax refund or contractor offset
- (d) Collection via IRS offset (all types)
- (e) Collection via Administrative Wage Garnishment
- (f) Collection via levy
- (g) Collection via consolidation
- (h) Collection via rehabilitation
- (i) Repurchase transactions

xii. Payments must be recorded on the MGA database using on-line entry, cartridge, or FTP transmission, and must be applied in a manner consistent with federal requirements. In each case, the dollar amounts of borrower recoveries must be edited on-line and balanced to the check amount before being posted to a borrower's account.

xiii. Servicer will be responsible for all deposit functions associated with MGA collections.

xiv. The Servicer must resolve suspended/pended transactions within one business day. All transactions must be tracked and aged.

xv. The Servicer must research and respond to all requests received from borrowers, lenders, agencies or any other authorized source. In addition, Servicer will be responsible for processing any correction transactions required. All requests must be tracked and monitored against turnaround time agreed upon during Implementation Planning, Section 1.022, 2A.

xvi. The Servicer must issue all refund disbursements to borrowers, lenders, trustees, employers, etc. upon request from CCI or designee. In addition, refund requests may be based on an overpayment report generated monthly as described in Section 1.042.

xvii. The Servicer must issue all invoices and collections of payments from lenders resulting from underpayments on either consolidation or rehabilitation transactions or Non-sufficient Funds received after the account has been forwarded to the lender. Invoices for underpayments will be based upon tolerances established during Implementation Planning, Section 1.022, 2A.

xviii. In the event the borrower sends correspondence with their payment, the Servicer will check the account to determine which entity is collecting on the account. If MGA is collecting on the account the correspondence will be sent to MGA via overnight mail. If the account is being collected by a collection agency/subcontractor, the correspondence should be referred to the Servicer's default/collection portfolio staff (see Section 1.022, 4F2c).

xix. The Servicer must monitor, track, determine trends, report, and communicate collection subcontractor(s) performances associated with timely remittances of both positive and negative payments. In addition to supplying each collection subcontractor their performance report, the Servicer will participate in a monthly collection subcontractor review via conference call with each subcontractor collecting upon respective portfolios. Copies of the report will be made available to MGA upon request.

xx. The Servicer must generate hardcopy and/or electronic monthly reports within five days of month end to assist MGA in reconciling recoveries to remittance received and reconciliation to the Office of Fiscal Affairs accounting system. Non-routine collection situations also must be accommodated, including overpayments, checks returned for insufficient funds, injured spouse claims, account adjustments, tax refund offsets, and ED reimbursement adjustments. When appropriate, the system automatically must generate the appropriate adjustments to the ED report form (currently Form 2000).



G. School/Lender File Maintenance

The Servicer must maintain appropriate master, transaction, and history files for MGA schools and lenders (including lender servicers and secondary markets). This includes all activities, data processing, and controls associated with maintaining information for these entities.

- 1) Servicer and MGA staff must be able to update client information when they are informed of changes. Changes may be received via hardcopy/mail, electronic means, telephone call, or facsimile from MGA staff or MGA-authorized individuals at each institution (see Section 1.022, 3A9).
- 2) The Servicer must obtain approval from CCI or designee about any lender or school demographic information (i.e., point of contact, address, school number, etc.), and any other client profile changes before any change is made.

H. Federal Reporting

The Servicer must complete all documents required for reporting to ED or any other federal agency. MGA must review and sign off on each report after it has been prepared by the Servicer (i.e., before it is submitted to the federal agency). In addition, the Servicer must provide MGA with on-line access to the detail used to prepare each report (see Section 1.022, 3A9).

- 1) The Servicer must prepare reports in compliance with any current or future federal regulations. Prior to providing reports to MGA, the Servicer must balance and verify all data to ensure accuracy of the reports. Data must be provided as required by ED.
- 2) The Servicer must prepare the portions of the Guaranty Agency Quarterly Report (ED Form 2000) and all revised versions related to student loan data contained in the database according to the procedures, format, and schedule specified by ED. MGA will complete financial data related to internal operations such as investment earnings and operating expenses. The Servicer must make these reports available to the Contract Compliance Inspector or designee within five business days of the end of each quarter (December 31, March 31, June 30, and September 30) for review and certification before they are submitted to ED. MGA will submit the reports to ED. These reports must be available on-line (see Section 1.022, 3A9).
- 3) MGA participates in the Federal Income Tax Refund Offset Program authorized by ED as a means of recovering defaults. The Servicer must create the reports and cartridges (or other transmission media) necessary for participation, as well as comply with all regulations regarding the Federal Income Tax Refund Offset Program. The Servicer must:
 - a. Generate an initial notice to borrowers of MGA's intent to seize the federal tax refund on all accounts eligible for offset and provide MGA a list identifying the borrowers notified. This list must be provided to MGA when it is generated, and the list must be available on-line (see Section 1.022, 3A9).
 - b. Identify and delete (deactivate) from the IRS program (Federal Income Tax Refund Offset Program) any IRS-certified borrower whose status has changed due to death, disability, paid-in-full, settled, school closing, false certification, or bankruptcy status.
 - c. Identify and certify borrowers for offset who did not make a payment after being notified.
 - d. For borrowers certified for offset, place an indicator on the borrower's on-line default record in the MGA database.



- e. Produce tapes that meet IRS specifications, at federally required intervals, including update tapes that list payments made by certified borrowers, overpayments from IRS tax refund offsets, and deletions of certified borrowers.
- f. Modify the tape formats, at no charge to MGA, as federal specifications change.
- g. Post all offset recoveries less the IRS fees to the borrower's defaulted loan payment history. Also process IRS injured spouse transactions less the IRS fee to the borrower's account.
- h. Process IRS tax refund offsets as they are received and apply offsets or assignment requests to the borrowers' loan balances or account records.
- i. When a payment is a result of an IRS tax refund offset, the Servicer's system must automatically generate and mail to the borrower a statement indicating that the payment is a result of an IRS tax refund offset.
- j. Maintain an IRS status on each loan throughout IRS processing in the MGA database.

4) The Servicer must ensure MGA compliance with all NSLDS submission requirements. Requirements include:

- a. Running MGA's data through the necessary editing process and submitting the data to the NSLDS.
- b. Receiving MGA's error tapes (after NSLDS processing).
- c. Working with MGA's staff to resolve error volumes, e.g., those that are widespread and/or system caused.
- d. Processing MGA's lender reporting files entails the following:
 - i. Reviewing error files.
 - ii. Working with MGA and its lenders/lender servicers that have errors to correct the issues.
 - iii. Producing NSLDS Unreported Loans files/reports and sending the reports to the lenders or their servicers upon request in a hardcopy format.
- e. Processing SSCR files (see Section 1.022, 4A5g).
- f. Actively participate in meetings with ED, NSLDS, and the NSLDS contractor to ensure the Contractor is up-to-date on NSLDS requirements for guarantor reporting (including ED Form 2000, lender reporting, and SSCR reporting).

5) The Servicer must calculate/report on the various types of default rates by lender and by school for the cohort or fiscal year. Gross and net cumulative rates are calculated using data provided on ED Form 2000. The trigger rate is calculated using data from ED Form 2000 on loans in repayment and from ED Form 2000 on cumulative defaults. Cohort default rates are available through the NSLDS with data provided by the Servicer. In addition, the Servicer must calculate/report the following default and recovery rates by lender and school:

- a. Cumulative gross default rate: ratio of defaults [bad debt and uncollectible loans] to matured paper.
- b. Cumulative net default rate: ratio of defaults minus net recoveries to matured paper.
- c. Recovery rates (included in the default rates explained above).



- d. Default performance rate: annual number which is calculated by dividing the amount of bad debt purchased during the prior fiscal year by the amount in repayment at the end of the prior fiscal year. This must be available for viewing on-line (see Section 1.022, 3A9).
- 6) MGA staff must be able to change account information on the Servicer's system based on schools' successful appeals of their cohort default rates (see Section 1.022, 3A9).

I. School and Lender Program Review/Technical Assistance Support Services

MGA is required by federal regulations to review schools' and lenders' compliance with program statutes, regulations, and policies. MGA views this function not only as enforcing program compliance, but as an opportunity to offer various types of assistance to its school, lender, and lender servicer clients.

To support this function, various kinds of electronic data processing support are required from the Servicer. Chief among them is the need for listings of borrowers within "designated categories" and "designated time frames" from which to select random samples. Similar but different borrower listings are needed in relation to the assessment of liability to facilitate a school's identification of all noncompliance cases in a population when the random sample indicates a noncompliance violation is widespread and system-caused.

Since default rates for schools and lenders are monitored by MGA and ED in relation to participation in the FFELP, schools and lenders need to know who their defaulted borrowers are.

- 1) The Servicer must generate borrower listings via an ad hoc report writer tool or on-line report generation from which program review sample cases may be selected or the extent of a noncompliance liability can be identified. These listings may range from the entire population of a school or lender to a small subset. The Servicer must have commonly used programs available to MGA for typical report data requested for school and lender reviews. MGA also must be able to define data parameters according to a specific need (see Section 1.042.3 for ad hoc reporting requirements). These listings are to be printed at MGA and available on-line (see Section 1.022, 3A9). Borrower listings and defaulted borrower listings must be delivered to MGA within 48 hours of the receipt of the electronically transmitted request.
- 2) The Servicer must provide listings of defaulted borrowers on-line for any school or lender and receive electronically transmitted requests for the listings on-line from MGA. These listings may be hardcopy or, at MGA's option, electronically transmitted on-line/via Internet to MGA or the school/lender being reviewed. Borrower listings and defaulted borrower listings must be delivered to MGA within 48 hours of the receipt of the electronically transmitted request.

5. FORMS MANAGEMENT/DISTRIBUTION

The Servicer must manage and distribute all manual and computer-generated MGA forms, including camera-ready forms required elsewhere in this RFP and Contract. The Servicer must design the forms and assist MGA in identifying key data elements needed to comply with changes in federal law and achieve efficient data entry onto the MGA database (i.e., design forms with critical data fields noted and sorted for efficient data entry). All formats, content, logos, and contact information will be subject to approval by CCI or designee. The Servicer must provide MGA and its borrower, school, and lender client's adequate quantities of forms to meet MGA requirements (see Price Proposal, Appendix A, Attachment 4 for estimated quantities). All federal forms must be provided at no cost to MGA or its clients

A. General Requirements

The Servicer will be responsible for all manual and computer-generated forms as follows:

- 1) Design (subject to CCI or designee approval, and obtain approval from ED, if necessary). The Servicer must design new/revised forms and have the forms approved for printing/reprint within 20 business days of request from CCI or designee. Any design work and printing expenses for non-federally mandated forms may be billed to MGA.



- 2) Production/Printing
 - a. Refer to Department of Technology, Management and Budget (DTMB) standard information (State Administrative Guide procedure 0330.01 [Printing and Copying Requirements and Approval Process] at http://www.michigan.gov/dmb/0,1607,7-150-9131_9347-28031--,00.html)
 - b. For the ED approved forms (Deferment forms, etc.), follow the specifications provided with each form.
 - c. For the existing customized forms/brochures, use the same specifications of the existing form/brochure in use.
 - d. Establish a total turnaround time for new/revised forms (from MGA request to delivery of stock) that does not exceed 20 business days after MGA approval.
- 3) Providing Place on Demand (POD) inventory management/tracking/monitoring.
- 4) Distributing forms: Distribution costs must be included in the Price Proposal of the Servicer's proposal. Forms must be distributed within one business day of request; furthermore, forms must be received by requester within three business days of request. Overnight requests must be approved by CCI or designee.
- 5) Updating forms to reflect Federal, State, and other changes are subject to CCI or designee approval. All form changes due to changing federal laws or regulations must be provided at no cost to MGA or its clients.
- 6) Making all changes and distributing forms/documentation to schools and/or lenders, so forms/documentation are received at least 10 business days before system implementation of a scheduled change or cut-off date of an obsolete form. A cover letter to explain the change(s) and appropriate user/system documentation updates must accompany all form and procedure changes.
- 7) Create, produce/print, distribute, and update on an ongoing basis the following materials (brochures, user documentation/manuals, training manuals, and reference materials), all of which are subject to approval by CCI or designee:

High-quality program description brochures, including:

- a. Check Free brochure
- b. Other brochures as developed (up to five different types of brochures).

Contractors must estimate requirements for all brochures based on MGA's projected volumes and the Contractor's experience. If actual volumes significantly exceed bid quantities, separate provision will be made as needed via Change Requests (see Section 2.024).

6. SCHOOL AND LENDER SUPPORT

The Servicer must perform the following school and lender support activities:

A. Professional Staff

The Servicer must provide trained professional staff that is knowledgeable of the guaranteed student loan industry and the MGA/Servicer's systems/services to meet, as requested.

B. Electronic Transmission Software, Equipment, and Processing Capabilities

Provide electronic transmission software and capabilities equivalent to those currently provided (PC-based or Internet-based software) by MGA to support existing service levels for electronic transmission of data between the Servicer and MGA clients at no additional cost to MGA or its clients. This requirement applies to any school and lender electronic communication services described elsewhere in this RFP and Contract that are currently installed and operational.



C. MGA Staff Training Programs/Materials

Prepare and conduct, with approval and participation from CCI or designee, the following:

- 1) Reserved.
- 2) Reserved.
- 3) Other training with content and timing as requested by the CCI or designee throughout the Contract will be considered discretionary and paid upon completion per Section 2.044 (d) (Contract Payment). Other training includes, but is not limited to, periodic seminars for training/retraining of MGA staff.

D. Discretionary School and Lender Support

- 1) Provide additional *discretionary* school and lender support over and above the mandatory support specified in Section 1.022, 6D **only when requested and pre-approved** by CCI or designee. The State will reimburse up to \$200,000.00 per year.
- 2) All travel hours will be paid as if the Servicer representative has a Lansing office location. For example, for a commitment in Detroit, MGA would pay for travel time from Lansing to Detroit, but not from the Servicer's home office to Lansing. If the destination were closer to the Servicer's office, travel hours would be paid as if travel originated at the Servicer's office.
- 3) All auditable out-of-pocket expenses for travel and lodging will be reimbursed at cost, up to a maximum of authorized State rates. Please see http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---.00.html for current rates.

E. Communication with Schools and Lenders

- 1) All correspondence from the Servicer to borrowers, schools, and lenders must clearly and prominently identify that the correspondence has been generated on behalf of MGA (see Section 1.022, 1A).

7. COMPUTER SOFTWARE MAINTENANCE AND ENHANCEMENT

Periodically MGA will want to enhance the services provided to borrowers, schools, and lenders or more effectively/efficiently work with outside entities (e.g., clients, ED, collection subcontractors, etc.). Some changes will be requested to accommodate the needs of MGA staff.

For certain types of software program/system modifications and enhancements during ongoing operations after Contract implementation cutover, MGA will reimburse the Servicer and Default Aversions Contractor at the Contract rate per programmer hour bid in the Contractor's and Default Aversions Contractor's proposal or otherwise negotiated by the State. The State's Project Management Methodology or other alternative method approved by CCI or designee will be used to manage system modifications/enhancements (see Sections 1.022, 7D and 2.271). The objectives of MGA in requiring this are to:

- Allow MGA to effectively manage system modifications and minimize the related expense.
- Sign-off on the specifications and intent of all changes before the Contractor performs the work.
- Understand and approve cost/benefit of changes requested.
- Manage the priorities and timeframes of systems changes.
- Manage/minimize the impact on MGA and its borrower, school, and lender clients.
- Separate MGA-requested programming/system modifications and enhancements costs from mainstream/routine/required program operational expenses to allow Servicers and Default Aversions Contractors to bid "clean" operations pricing for the Contract period.



A. Federally Required Changes

Computer software/system modifications necessary to meet federal reporting and processing requirements must be included in the Servicer's and Default Aversions Contractor's base Contract bid for program operations.

B. Emergency Fixes

"Emergency fixes" necessary to correct the Servicer's and Default Aversions Contractor's production program/system failures and to maintain service operations will not be reimbursed by MGA. All production program/system failures (emergency fixes) must be corrected by the Servicer as quickly as possible making every effort to complete within two days. The Servicer must notify MGA the next business morning of any emergency fixes necessary to correct the production program/system failures by the next business morning that includes the following information:

- Nature/description of the problem.
- Action/user/situation that caused the problem.
- Change/correction applied and its impact on operations.
- Additional steps required to correct the situation and prevent future occurrences of the same problem.

CCI or designee will immediately notify the Servicer if MGA staff determines that there is a defect or failure in the Servicer's and Default Aversions Contractor's system that could have an impact on the system's production.

C. Discretionary Changes

- 1) MGA will reimburse the Servicer and Default Aversions Contractor at the Contract rate per programmer hour for all program/system changes requested by CCI or designee that are not federally mandated. This rate must include all costs associated with program specification, development, testing, and turnover, including any associated computer processing and system execution costs.

The Servicer and Default Aversions Contractor must document and itemize all costs in writing to CCI or designee if any such discretionary modification transferred to the production environment causes the Servicer and Default Aversions Contractor to incur substantive ongoing costs of any kind. Separate provision will be made as appropriate. Development hours, system execution costs, and any other charges must be itemized by project/modification request number for all non-federally mandated changes.

This process will apply to all change requests by using the State's Project Management Methodology or other alternative method approved by CCI or designee to manage system modifications/enhancements (see Section 2.271).

- 2) The cost of preparing the cost information for discretionary changes will be borne by the Servicer and Default Aversions Contractor unless otherwise agreed to in writing by CCI or designee. Approval to develop cost information will be provided per Section 1.022, 7C1.
- 3) For major changes, the Servicer and Default Aversions Contractor may structure a separate "project" to develop specifications and estimates for approval.
- 4) MGA reserves the right to alter, delay, or cancel implementation of any change except those that are federally mandated according to specific methods and timeframes.

D. System Change Procedures

For either federally required or MGA-requested changes, the Servicer and Default Aversions Contractor must adhere to the following procedures for system modification and enhancement:



- 1) All software/systems modifications or enhancements requested/recommended by the Servicer, Default Aversions Contractor or CCI or designee, participating schools and lenders, or related organizations (e.g., the State of Michigan Legislature, etc.) must be specified, documented, and estimated in terms of programmer hours, system execution costs, and any other applicable costs, elapsed time required, and overall development cost by the Servicer and Default Aversions Contractor prior to the Servicer and Default Aversions Contractor beginning work. All such requests must be presented and discussed periodically with CCI or designee for review, prioritization, and written approval/sign-off before beginning work (see Section 1.022, 7C for system change request process).
- 2) If the requested software or system changes are provided to any of the Servicer's or Default Aversions Contractor's other customers, MGA may only be charged its applicable, proportional share of the costs.

E. Usual Contractor Billing

- 1) The Servicer and Default Aversions Contractor must itemize the invoice to MGA for completed modifications at the end of the month in which the modifications are completed (including specified program/system testing to the satisfaction CCI or designee) (see Section 2.044 for Contract Payment).
- 2) Unless otherwise specified by CCI or designee, completed requests must be implemented operationally within 20 business days for final acceptance testing, including documentation and communication of changes in advance to all affected users as required in Section 1.022.5A6.

F. Progress Billing

For major development projects requiring more than 20 days from start date to completion, the Servicer and Default Aversions Contractor may establish a progress billing approach based on percent of completion at the end of a given billing period; furthermore, the progress billing approach must be approved by the CCI or designee in the system change request process in Section 1.022.7C.

8. PROGRAM CONVERSION/TURNOVER

At the end of the Contract period, MGA requires that the Servicer and Default Aversions Contractor provide assistance in transferring contracted operations, systems, and any MGA-owned equipment and materials in operation or storage/inventory, another Servicer, Default Aversions Contractor or a combination of the four. MGA's major objectives are to:

- Provide for an orderly and controlled transition to a successor Servicer and Default Aversions Contractor.
- Minimize any disruption of processing and services provided to MGA or MGA borrower, school, and/or lender clients.

A. Conversion/Turnover to MGA or Successor Servicer

The Servicer and Default Aversions Contractor must support the conversion/turnover to either a designated State of Michigan data center or to a successor Servicer and Default Aversions Contractor, at the option of MGA.

B. Comprehensive Plan for Operational Conversion/Turnover

The Servicer and Default Aversions Contractor must provide a comprehensive plan for the operational conversion/turnover to the CCI or a successor Servicer and Default Aversions Contractor of all FFELP loan programs and their accumulated operational data files, documentation, and other related information within 20 days of notification of a new Contract award to another Servicer and Default Aversions Contractor or Contract termination to facilitate the smooth transfer of operations and accumulated history for continued operation. To the extent feasible, the transition/conversion of the MGA loan program to a successor entity (see Section 1.022) must be completed within 90 days of notification.



C. Servicer Personnel

The Servicer and Default Aversions Contractor must provide personnel with first-hand knowledge of the Servicer's and Default Aversions Contractor's MGA support operations and computer systems to work with the appropriate MGA and/or successor Servicer and Default Aversions Contractor staff to define the specifications for conversion of computerized information in a manner consistent with the approach and degree of completeness defined in Program Conversion (see Section 1.022, 2).

D. Conversion Programs

- 1) Any conversion programs necessary to provide conversion data in formats that are acceptable to MGA and the successor Servicer and Default Aversions Contractor must be written and tested to the satisfaction of the CCI or designee by the successor Contractor.
- 2) The Servicer and Default Aversions Contractor must provide electronic copies of current MGA data files as of the scheduled conversion testing date(s) and the actual production cutover date in existing file formats.
- 3) All file indexing and other data relationships/dependencies represented in the Servicer's and Default Aversions Contractor's data file structures must be either documented or sufficiently explained so these relationships can be reconstructed as appropriate by the successor Servicer and Default Aversions Contractor in accordance with its Program Conversion (see Section 1.022, 2).

E. Record Types

The Servicer and Default Aversions Contractor must work with MGA to plan for a successful program conversion and provide electronic media approved by the CCI or designee containing MGA data, documentation that describes the files, records and data fields contained on secured FTP data files. The data supplied must include the following records:

- School, lender, and collection agency/subcontractor data
- Borrower, applicant, and loan data
- Default aversions data
- Defaulted loan and post claim collection data.

F. Conversion/Turnover Activities

The Servicer must perform the following activities "as of" the conversion/turnover date determined in Section 1.022, 8C for all MGA programs:

- 1) Prepare electronic media of the MGA database and provide the formats/data to the specifications developed by/with the CCI or its successor Servicer and Default Aversions Contractor (see Section 1.022, 8E for record types). Any applicable user documentation (file specifications, formats, etc.) needed to facilitate the transfer of data to a successor system, up-to-date as of turnover date must be transferred to MGA at the end of the Contract period. All operational records retained/archived/imaged throughout the Contract period including, but not limited to, the following:
 - a. Optical platters and corresponding index data
 - b. Archived computer data tapes required by federal law or regulation for extended retention periods
 - c. Activity logs and other audit trail data, in computer readable/convertible form
 - d. Hardcopy applications/promissory notes and Master Promissory Notes
 - e. Any other operational documentation specified to be retained elsewhere in this Contract.
- 2) Calculate/report necessary control totals at conversion for all MGA loan programs.



- 3) Organize and transfer all MGA forms, materials, documents, and files. All forms, documents, materials, and files must be boxed and labeled with a description of the contents (see Section 1.022, 5A3 for forms inventory). Supply inventories, including any applicable paper forms (MGA hardcopy applications, etc.) which are not specific to the Servicer's computer systems must also be transferred to MGA at the end of the Contract period (see Section 1.022, 5A6 for distribution).
- 4) Identify, organize, and transfer all unprocessed or rejected applications in process. Applications must be organized by Social Security number (SSN).
- 5) Identify, organize, and transfer all other unprocessed transactions received or rejected transactions in process. Transactions must be organized by transaction type and SSN.
- 6) Identify, organize, and transfer all unresolved default aversions or other incomplete requests for assistance. If a default aversion is selected, this specification will apply to the applicable contractors (see Section 1.022, 4A).
- 7) Generate all necessary end-of-period and cumulative year-to-date reporting to accurately reflect all MGA activity posted as of the cutover date in accordance with federal regulations and to support conversion balancing (see Section 1.022, 8G).
- 8) Direct all mail, other correspondence, tapes, electronic transmissions, telephone calls, etc. received at the Servicer's and Default Aversions Contractor's facility to MGA or the successor Servicer, at no additional cost to MGA. Hardcopy correspondence must be forwarded within 48 business hours of receipt. Tapes, telephone calls, electronic transmissions, etc. must be transferred within 24 business hours of receipt by the Servicer and Default Aversions Contractor.
- 9) All computers, telephone, or other operating equipment purchased or leased by MGA, if any, must be turned over to MGA at the end of the Contract period.
- 10) Specifications documentation for all changes made during Program Conversion (see Section 1.022, 2) and during the course of the Contract as described in Section 1.022, 7 (Computer Software Maintenance and Enhancement) of this Contract.
- 11) Transfer any non-proprietary software developed solely to support MGA.

G. Delivery Dates

All turnover tasks called for from the Servicer and Default Aversions Contractor must be completed by the scheduled delivery dates to MGA or its successor Servicer and Default Aversions Contractor.

H. Each deliverable in Section 1.022, 8 must be completed to the satisfaction of the CCI prior to final payment.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Key Personnel:

- 1) John Gennett, Contract Relationship Manager.
- 2) Nicki Seward, Operational Liaison
- 3) Doug St Peters, Vice President, Portfolio Management Services
- 4) Jerry Maher, Division Head and Senior Vice President, Financial Institution Sales/Guarantor Business Development



1.040 Project Plan

1.041 Project Plan Management

1. The Contractor must carry out this project under the direction and control of the CCI or designee.
2. Although there will be continuous liaison with the Contractor team, the CCI or designee must meet monthly at a minimum with the Contractor's project manager, either face-to-face or via conference call, for the purpose of reviewing progress and performance service level reports and to provide necessary guidance to the Contractor or MGA in solving problems which arise.
3. The Contractor must submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the CCI; and notification of any significant deviation from previously agreed upon work plans.

Because the Contractor is the incumbent service provider, there is no need for a project plan to support a data conversion effort from one system to another. To the extent that any loan records are transferred to MGA or a successor servicer at the end of the Contract term, a project plan will be developed and provided to MGA in support of data turnover activities. To support a transfer of loan records, the Contractor will provide data files at two times during the process: a test file of loan records to validate the successor servicer's conversion program logic, and a final data file to be used to convert all valid loan records to a new data base. Data files will be provided in a standard Contractor format.

Depending on servicing options chosen by MGA, it is possible that certain operational responsibilities may be transferred from the Contractor to MGA (i.e. default aversion servicing, claim review processing). The Contractor will work with MGA to develop the necessary project plan(s) to fulfill this objective at the direction of the CCI.

1.042 Reports

Section 1.042 provides information about system reports and contains summary details about key operational and management reports presently used by MGA. MGA and its school and lender clients must have access to education loan account information which will allow report data to be viewed, transferred, and printed with greater flexibility via the Internet. MGA borrowers must be able to view their account status via the Internet, seven days a week, 24 hours a day.

The Servicer and Default Aversions Contractor must provide operations and management reporting for all required functions. All necessary information must be available in a manner, format such as electronic reports are currently sent to Solimar print/director, however other software is acceptable as long as it meets the State of Michigan standards and is available to MGA and frequency consistent with the intended use of the current MGA reports. Contractor systems that produce meaningful, exception-oriented standard reporting (e.g., date range or condition driven, etc.) and have good (i.e., acceptable to MGA) on-line exception-oriented inquiry capabilities that preempt hardcopy or imaged documents will receive more favorable evaluation. All fixed-format (scheduled, exception-based, or on request) reports to be produced for MGA must be confirmed and approved for format, content, frequency, and delivery media (hardcopy, cartridge, on-line, etc.) by MGA. Reports necessary to perform the functions required by the Contractor/Contractor are the responsibility of that party.

1. The Servicer and Default Aversions Contractor must include samples of all standard or special reports/forms/letters needed to provide regulatory and MGA management information. Refer to the individual sections of this Contract for specific information about the required litigation (see Section 2.231) status reports (Section 1.022, 2A3), and on-line processing (see Section 1.022, 3A9). At minimum, the Servicer's and Default Aversions Contractor's other on-going reports for Section 1.022 must be equivalent to those listed below, organized by guaranty agency function as follows:



- a. Borrower Account Maintenance (Section 1.022, 4A)
- b.. Default Aversions (Section 1.022, 4B)
- c. Claims Processing (Section 1.022, 4C)
- d. Borrower delinquency/Default Self Serve Internet Site (Section 1.022, 4D)
- e. Auto-dialer (Section 1.022, 4E)
- f. Collections (Section 1.022, 4F)
- g. School/Lender File Management (Section 1.022, 4G)
- h. Federal Reporting (Section 1.022, 4H)
- i. School and Lender Program Review/Technical Assistance Support Services (Section 1.022, 4I)
- j. Forms Management/Distribution (Section 1.022, 5).

2. Upon request, the Servicer and Default Aversions Contractor must submit monthly reports that indicate actual performance versus the Contract service levels and objectives described in Sections 1.022, 3A10 through 3A14 (see Section 1.022, 3A15).
3. The Servicer and Default Aversions Contractor must provide ad-hoc, inquiry, and report/writer tools (fixed format "on-request" reports are not included here) and capabilities on its systems with arithmetic operation capabilities for use by MGA and its clients. The tools must be easily used by non-technical staff. The system must be capable of running programs and producing output within minutes to 24-hours of the request, at a maximum, without noticeably impacting on-line users. When creating programs, MGA must have access to query on all fields contained within the MGA database. MGA must have access to all information on a weekly and monthly basis. MGA must have access to each month's new loan activity and system updates within the first two days of the following month as well as the 12 previous months and must have access to the weekly updates by Monday of each week. The Servicer and Default Aversions Contractor must also provide a test database environment that can be used when testing newly created/written programs. The output for the test database must be immediate. Standard daily availability (e.g., restricted on-line hours, overnight only, etc.) must meet the specifications of Section 1.022, 3A10.
4. Input control reports must be generated for all MGA client input processed (data files). These reports must be archived by the Contractor and recalled within three business days of a request by the Contractor, MGA, or MGA clients to verify processing of information. In addition, a report by type of transaction (lender transfers, lender manifest data, lender requests for default aversion assistance, etc.) must be provided to MGA weekly. At a minimum, the input control and MGA report must indicate the audit trail information in Section 1.022, 3A16 and the following:
 - Tape volume/serial number or transmission identifier.
 - Identity of MGA client who submitted the data.
 - Date the MGA client created the tape or electronic transmission.
 - Type of transaction(s) being reported.
 - Date the Contractor received data from MGA client.
 - If tape/file is unusable, date returned to/notified MGA client.
 - Date data entered on MGA's database.
 - Number of records read.
 - Number of records processed.
 - Number of records rejected.
 - Number of damaged records/blocks.
5. Access Rights Reports: Within 10 days of each month end, the Servicer and Default Aversions Contractor must provide an access report to identify all authorized system users and the access rights each may perform on the MGA database (see Section 1.022, 3A9).
6. Customer Assistance Services for Non-delinquent Accounts: Provide quarterly statistics regarding number of calls and issue categorization of same. Also, provide information on hold time, call length, etc. (see Section 1.022, 4A11).



7. Document and prepare weekly overpayment reports for offset reimbursements when warranted, and report this information on ED Form 2000 (see Section 1.022, 4F3).
8. Generate reports weekly to MGA and collection subcontractors to identify IRS tax refund offsets and new outstanding loan balances. These reports must be available on-line (see Sections 1.022, 3A9, 4F3axi and 4F3h).
9. Generate error reports monthly, printed at MGA's site, to allow MGA staff to resolve the errors appropriately. These reports must be available on-line (see Sections 1.022, 3A9, 4F, and 4H).
10. Produce NSLDS Unreported Loans files/reports and send the reports to the lenders or their Contractors upon request in a hardcopy format (see Section 1.022, 4H4).
11. Generate all necessary end-of-period and cumulative year-to-date reporting to accurately reflect all MGA activity posted as of the cutover date in accordance with federal regulations and to support conversion balancing (see Section 1.022, 8F8).
12. Lists of borrowers whose remaining total (combined) outstanding balance (principal, interest, collection costs, and other charges) is less than \$25 or an amount specified by CCI or designee must be sent to MGA monthly (see Section 1.022, 4D).
13. The Contractor must provide a weekly list of defaulted borrowers whose next scheduled payment will pay the account in full (see Section 1.022, D).
14. Document and prepare weekly overpayment reports for offset reimbursements when warranted, and report this information on ED Form 2000 (see Section 1.022, 4F3).
15. Portfolio Reporting: MGA requires information about its portfolio to analyze the loans of lenders and schools and assess the risk associated with each.
 - A. A small number of MGA loans made previous to the federal loan programs currently exist on the MGA database. The Contractor must include these loans in its reporting for MGA.
 - B. The Contractor must be responsible for all report preparation costs and procurement of required supplies. Reports must be available by a schedule and format/medium defined by MGA with the Contractor. On-line, exception-oriented inquiry capabilities acceptable to MGA may preclude hardcopy printing. At a minimum, the Contractor must provide reports for portfolio analysis that are equivalent to those currently provided to MGA.
 - C. Daily reports must be provided by 8:00 a.m. ET the next morning.
 - D. Weekly reports must be provided by the first business day of each week at 8:00 a.m. ET.
 - E. Monthly reports must be provided within five business days of month-end.
 - F. Quarterly and annual reports must be provided within 15 business days of the reporting period end.
 - G. All output documents requiring mailing (forms, reports, correspondence, etc.) must be postmarked by the next day after generation.
 - H. On-request (static reports) and ad hoc (flexible format) reports must be provided within one to 24 hours of the time the reports are requested.
16. Reports must be sent to MGA within one business day after they are prepared.



17. Annual reports must be provided by the 15th day of the month following MGA's fiscal year end (September 30).

1.050 Acceptance

1.051 Criteria - Reserved

1.052 Final Acceptance - Reserved

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Pricing, see **Attachment A**.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

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

1. Pricing for Services

The pricing for services performed under this Contract will be performance-based to ensure the appropriate Contractor incentive to maintain a high level of quality in the services it provides to MGA and its participating students, families, schools, lenders, lender Contractors, and secondary markets.

If for any reason federal law or ED should change its methods/rates of payments to MGA, then the State and/or Contractor has the right to amend the pricing structure in place with the Contractor. CCI must review and approve any and all price change request.

a. Portfolio Management Fee (Servicer Only)

In the event that Reauthorization of HEA or other federal legislative action creates changes to statutory/regulatory guarantor funding levels, the following guidelines will be used to adjust pricing during the term of the Contract:

For each recovery type:

(New retention rate/Current retention rate) x Portfolio Management Fees per **Attachment 3** = New Portfolio Management Fee.

b. Account Maintenance Fee (Servicer Only)

In the event that Reauthorization of HEA or other federal legislative action creates changes to statutory/regulatory guarantor funding levels, the following guidelines will be used to adjust pricing during the term of the Contract:

New AMF Rate/Current AMF Rate x Contractor's AMF rate per **Attachment 1** = New Contractor AMF Rate.

2. Performance Definitions:

A. Account Maintenance Fee (Servicer Only)

This fee category will consist of the Contractor's pricing for the fee on MGA loans outstanding (Maintenance Fee) to cover ongoing account service to the point of account delinquency.

The Contract price for the Account Maintenance Fee shall be calculated by multiplying MGA loans outstanding by the billing rate per, **Attachment 1**.



Account Maintenance Fee paid to Servicer will be billed monthly by multiplying one-twelfth of the annual billing rate x MGA month-ending loans outstanding.

For the new Contract term, Sallie Mae shall charge MGA an Account Maintenance Fee of 0.039% (3.9 basis points) per Contract year. The fee is calculated using MGA's monthly loans outstanding as reported on the EAGLE System MRPBRR59 report, multiplied by .00325 (annual charge of 0.039% ÷ 12 months = .00325%, billed monthly). The Account Maintenance Fee is stated in basis points and not as a percentage of the fee paid to MGA by the U.S. Department of Education.

B. Default Portfolio Management Fee (Servicer Only)

The Contractor must base its default portfolio management fee on a rehabilitation strategy and a percentage of gross recoveries (see Section 1.022, 4F). From that fee the Contractor will be responsible for paying collection costs to all collection subcontractors. The Contractor also will negotiate collection subcontractor agreements and assume responsibility for collection subcontractor performance. The Contractor will be responsible to reimburse the agency for any loss in retention that results from the Contractor exceeding the 45% consolidation limit per U.S. Department of Education regulations for only those defaulted loans assigned to the Contractor per the guidelines established in Section 1.022.4.F. Any adjustments to this limit by Ed will result in a corresponding adjustment in the limit imposed on the Contractor. Any other such limits as imposed by Ed that affect performance parameters of MGA, the Contractor and its subcontractors will be treated in the same manner. The Contractor must maintain data that justifies the allocation of business to collection subcontractors based on their performance.

The Contract price for the Default Portfolio Management Fee shall be calculated by recovery type multiplied by the percentage bid by the Contractor for each 12 month period of the Contract per the recovery type breakdown in **Attachment 3**.

Portfolio Management Fees will apply:

Cash and Administrative Wage Garnishment Collections ("Direct Recoveries" per **Attachment 3**) x 12.75%

Loan Rehabilitation Collections = (Collected Principal + accrued interest + added collection costs (capped at 18.5% of principal and accrued interest)) x 19.75% through June 30, 2014.

For the period beginning 7/1/2014, the Portfolio Management Fee for Loan Rehabilitation Collections is (Collected Principal + accrued interest + added collection costs (capped at 16% of collected principal and accrued interest)) x 11.15%

FDLP Loan Consolidation Collections = Loan Consolidation Collections x 4.95%

Contractor must pay all vendor collection fees on behalf of MGA from the above Portfolio Management Fees.

Contractor must charge for all CAPS letters mailed on behalf of MGA. Contractor estimates postage, supply and operations costs of \$145,000 per year. Costs will be determined using the actual letter volume mailed. Mailing costs are calculated using a per unit charge comprising of:

- Per initial page printed: \$0.021
- Each additional page printed: \$0.054
- Per envelope mailed: \$0.018
- Operations and postage costs: 1 oz. letter: \$0.609



Any increase in U.S. Postal Service rates during the term of this Agreement will require an adjustment in the applicable U.S. Postal Service rate. Paper supply and operations costs may be adjusted from time-to-time. Contractor must provide written notice to MGA of any increases to these rates.

At its option, MGA may choose to outsource the claim review function. A cost for claim review service is based on a metric of 'claims received' per month, multiplied by a rate of \$9.85 per claim received. Based on estimated volume of claims received of 23,000, we estimate the annual cost of claim review at \$226,550. The actual number of claims received is available on the Claims Disposition Summary Report (ECPBRA07) and is billed monthly. Contractor expects the number of claims to decline over time and have assumed a 5% reduction for each year of the Contract.

C. Default Aversion Fee (DAF) (Default Aversion Servicer Only)

The DAF fee submitted by the Contractor or Default Aversion Contractor must be based on all (first time and repeat) DAARs that it successfully cures. A cure is defined as any account brought to zero days delinquent. (see Section 1.022, 4B) **Attachment 2**.

For this Contract, MGA has selected servicing Option 1: SAC Performs Default Aversion

SAC will perform default aversion servicing which will be billed at a rate of 0.15% (fifteen basis points), multiplied by the dollar amount cured each month. It is assumed the annual cures include a credit for delinquent loans financed in government-sponsored credit facilities that are PUT or sold to USDE at a certain delinquency stage (recorded as cured loans).

Option 2 Pricing: MGA Performs Default Aversion

At its option, MGA may choose to perform default aversion services on its own behalf. Pricing for this Option is provided on **Attachment 2**. An explanation of Option 2 pricing is provided:

- Letter a): no major system conversion effort is required since both EAGLE and BPS are used by MGA today. To effectively manage the high number of outbound calls needed to effectively perform default aversion servicing, MGA will need to obtain an auto dialer application at its own expense. Additional programming efforts will be necessary to create daily auto dialer download files using Sallie Mae's EAGLE System data. Borrower letters must be changed to include new (not SAC) contact information. Costs for all programming efforts are assumed to be covered by the 4,000 programmer hours reflected on **Attachment 5**. MGA staff may require BPS system training; such training can be provided at a rate of \$60.00 per hour. SAC does not provide skill training on collection techniques for successful delinquent account resolution.
- Letter b): a license fee for BPS of \$100,000 per contract year shall apply. License fee is waived if MGA selects Option 1 with SAC as default aversion servicer;
- Letter c): there are no Contractor-related transaction costs for processing both electronic and manual DAARs. MGA would need to hire incremental collection staff at its own expense to perform default aversion services (arguably the transaction cost under Option 2);
- Letters d) and e) do not apply if MGA performs servicing on its own behalf. Set-up costs for interfaces with any external service provider other than SAC will apply. Such costs cannot be estimated without first having an understanding of the scope of required interfaces. We consider these interfaces to be critical since the EAGLE System would serve as the 'system of record' for MGA data. It is assumed that these costs are covered by the 4,000 programmer hours reflected on **Attachment 5**;
- Letter f): To the extent default version letters are printed and mailed by Sallie Mae under Option 2, MGA will be charged for mailing and processing costs. See below for unit price information. We presently mail approximately 324,000 letters per year to delinquent borrowers; these costs are covered in servicing fees charged under Option 1. Including postage and paper costs, we estimate the annual mailing costs at \$199,600 per year; actual mailed volumes will be used to determine monthly fees. A breakdown of the costs are:



- Per initial page printed: \$0.021
- Each additional page printed: \$0.054
- Per envelope mailed: \$0.018
- Operations and postage costs for 1 oz letter: \$0.609

- Letter g): Should MGA perform default aversion servicing on its own behalf, MGA may use BPS and the EAGLE System, which will function as the system of record. Turnover costs only apply in the aggregate should MGA choose another servicer AND default prevention servicer. In this case, aggregated turnover costs are reflected on **Attachment 5**.

For Option 2, the EAGLE and BPS Systems are provided for MGA's use and will not be provided to any external default aversion servicing Contractor other than SAC.

Attachment 2 reflects pricing for both Options 1 and 2. Because MGA has selected Option 1 for this Contract, pricing for this Option has been carried to **Attachment 5**, Price Proposal Summary.

D. Conversion - Reserved

E. Forms and Price Proposal Summary (Servicer Only)

Forms Estimate and Price Proposal Attachment 4. Price Proposal Summary Attachment 5.

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 – Reserved

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract – Reserved



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of five years, beginning April 1, 2014 through March 31, 2019. 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 additional two 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 and approved by the Contractor, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

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



2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Technology Management and Budget, DTMB-Procurement and the Department of Treasury (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DTMB-Procurement 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 DTMB-Procurement for the Contract is:

Don Mandernach
 Procurement
 Department of Technology Management and Budget
 Constitution Hall
 525 West Allegan Street, 1st Floor
 Lansing, MI 48913
 Email: mandernachd@michigan.gov
 Phone: (517) 284-7019

2.022 Contract Compliance Inspector

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Director of DTMB-Procurement, in consultation with the Department of Treasury, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies no authority to change, modify, clarify, amend, or



otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement. The CCI for the Contract is:

Janet McKeown, Operations Specialist
 Department of Treasury
 (517) 335-1723
 mckeownj@michigan.gov

2.023 Project Manager – Reserved

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 the Contractor, and the Contractor may assign its rights and delegate its obligations hereunder to any affiliate or any transferee of all or substantially all of the business and assets of Contractor, provided that Contractor gives at least thirty (30) days prior written notice to the State pursuant to **Section 2.029(b)** below.

(b) 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 30 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. State approval of the assignment shall not be unreasonably withheld or conditioned.

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 and Contractor approval, and then only in accordance with the explicit written instructions from the State and Contractor. 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 bidder has used its position (whether as an



incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information

To the extent applicable, 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

As per Section 1.060 Proposal Pricing, the Contractor is providing firm, fixed prices for services specified in Article 1, Statement of Work for the entire term of the Contract. If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties may consider a reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope. Any change in the fees as specified in **Section 1.060** Proposal Pricing is subject to mutual agreement between the parties.

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, unless the scope of Services/Deliverables is materially expanded at the direction of the State or would have a material impact on the Systems or processes used by the Contractor to provide the services/deliverables provided hereunder. Any change in fees as specified in **Section 1.060** Pricing Proposal is subject to mutual agreement between the parties and will be documented using the State's Change Request Process, and no out-of-scope work will be performed by Contractor unless approved through the Change Request Process.

2.044 Invoicing and Payment – In General

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

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



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

(d) Contract Payment Schedule

1. Contractor request for performance-based payment.

The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the CCI. Unless otherwise authorized by the CCI, all performance-based payments in any period for which payment is being requested must be included in a single request, appropriately itemized and totaled.

2. Approval and payment of requests.

The Contractor is not entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The CCI must determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Contract. The CCI may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.

A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **Section 1.061** of the Contract.

The approval by the CCI of a request for performance-based payment does not constitute an acceptance by the State and does not excuse the Contractor from performance of obligations under the Contract.

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.

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

The Contractor must provide the CCI with the names of the Key Personnel initially assigned to this Contract and will provide advance notice within a reasonable timeframe of any changes to assigned Key Personnel.

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

The State reserves the right to request the removal from the Project if Contractor personnel are 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 qualified for the position.

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 that the State is not obligated to perform, 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, which approval shall not be unreasonably withheld or conditioned and to request the Contractor to replace Subcontractors found 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. 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 that is not already approved by the State unless the DTMB-Procurement has given written consent to such delegation, which consent shall not be unreasonably withheld or conditioned. The State reserves the right of prior written approval of all Subcontractors and to request 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 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 requested 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 (ICHA) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

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

2.092 Security Breach Notification

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

2.093 PCI Data Security Standard

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.



(c) The Contractor must properly dispose of cardholder data when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure. Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

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



2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination and Retention of Records

Under MCL 18.1470, the State or its designee may, at the State's expense, audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where the Services are being performed, and examine, copy, and audit all records, interim drafts of Deliverables, or other works-in-progress related to this Contract. Contractor must cooperate and provide reasonable assistance. To the extent any financial errors are revealed that require an adjustment of fees paid to Contractor under this Contract, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Services in connection with this Contract.

2.113 Retention of Records – Reserved

2.114 Audit Resolution

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

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.



(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

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 in all material respects 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 all material respects 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, to the best of Contractor's knowledge, 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 extent assignable or transferrable, 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 – Reserved

2.123 Warranty of Fitness for a Particular Purpose – Reserved

2.124 Warranty of Title – Reserved

2.125 Equipment Warranty – Reserved

2.126 Equipment to be New – Reserved

2.127 Prohibited Products – Reserved



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, if not cured within 60 days from notice, 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.

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 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 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must (and such requirement will survive a termination of the Contract) indemnify and hold the State harmless from and against any and all liability, obligation, loss, damage, cost or expense (including reasonable legal fees and expenses) that may be imposed on or incurred by the State, arising out of any third party claim or suit to the extent attributable to the willful misconduct or negligence of Contractor, or its employees, agents, and Subcontractors, or by anyone else for whose acts any of them are liable in connection with the performance of this Contract.

2.142 Waiver of Claim

To the extent permitted by law, the State must (and such requirement will survive a termination of the Contract) waive any claim against the Contractor for any liability, obligation, loss, damage, cost or expense (including reasonable legal fees and expenses) to the extent such liability, obligation, loss, damage, cost or expense (including reasonable legal fees and expenses) is attributable to the willful misconduct or negligence of the State, or its agents and contractors, in connection with the performance of this Contract.

2.143 Employee Indemnification - Reserved

2.144 Patent/Copyright Infringement Indemnification - Reserved

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 pursuant to the Contract, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the



failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate 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 reasonably determines that the Contractor has failed to demonstrate 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 in a material respect 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 60 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State reasonably 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) Either the State or Contractor may terminate the Contract, for cause, by providing notice to the other party in writing of a breach by the other party of any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or and the failure to cure such a breach within the time period specified in the Contract as set forth in the written notice of breach provided by the other party.

In the event the State terminates the Contract for cause, then all reasonable assistance, tasks and deliverables, including, but not limited to documents, files, and reports, related to the deconversion, decoupling and shut-down of the system identified in Article 1.022. Work and Deliverable that are undertaken or provided by the Contractor will be provided at no cost to MGA. In the event the Contractor terminates the Contract for cause, then the same reasonable assistance, tasks and deliverables, including, but not limited to documents, files, and reports, related to the deconversion, decoupling and shut-down of the system identified in Article 1.022 Work and Deliverable that are undertaken or provided by the Contractor will be charged to MGA as specified in **Section 1.022.8, Program Conversion/Turnover**.



(b) 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 or the Contractor may terminate the Contract for its convenience by providing notice in writing to the other party of its intent to terminate the Contract, at least 360 days prior to the effective date of termination.

In the event the State terminates the Contract for its convenience, then all reasonable assistance, tasks and deliverables, including, but not limited to providing documents, files, and reports, related to the deconversion, decoupling and shut-down of the system and work provided and identified in Article 1.022 Work and Deliverable, that are undertaken or provided by the Contractor will be subject to charges specified in **Section 1.022.8 Program Conversion/Turnover**. In the event the Contractor terminates the Contract for its convenience, then the same reasonable assistance, tasks and deliverables, including, but not limited to providing documents, files, and reports, related to the deconversion, decoupling and shut-down of the system and work provided and identified in Article 1.022 Work and Deliverable that are undertaken or provided by the Contractor as specified in **Section 1.022.8 Program Conversion/Turnover** will be provided to MGA at no cost.

2.154 Termination for Non-Appropriation

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

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect.

(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 having direct responsibility for the delivery of the services described in Article 1 Statement of Work, 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. Regardless of the basis for the termination, the Contractor is not obligated to pay, or otherwise compensate, the State for any lost expected future profits, costs, or expenses incurred with respect to services not actually performed for the State.

(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 reasonably determined by the State. 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.

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 - Reserved

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 90. 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. Uses of Contractor's Subcontractors are subject to separate agreements between the State and such Subcontractors.

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 an industry standard format acceptable to the State. Data may be provided to the State in a comma-delineated format at an additional cost. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.



2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of 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 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (a good faith 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 – Reserved

2.210 Governing Law

2.211 Governing Law

Except to the extent the services provided in the Contract may be governed by federal 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, exemplary, punitive or special damages, including without limitation, damages or costs related to loss of profits, business or revenue, business interruption, loss of goodwill, or loss of the use of any



data. 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; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to the value of the Contract or \$500,000, whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

Upon request, the Contractor shall provide a copy of its annual 10-K report filed with the Securities and Exchange Commission which provides a description of all substantive and material litigation matters. Receipt of the annual 10-K shall be deemed to satisfy all of the disclosure and reporting requirements of this section.

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

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

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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



- (1) Within 30 days of Contractor becoming aware that a change in its ownership has occurred, or is certain to occur, that could result in material and adverse 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 30 days whenever material and adverse changes to its asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

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

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

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

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Reserved

2.243 Liquidated Damages - Reserved

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other



forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities - Reserved

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 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 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 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 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 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

The State owns all Deliverables as they are works made for hire by the Contractor for the State.

2.262 Vesting of Rights - Reserved

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. The Contractor shall have all ownership and control of the Systems and any and all software programs owned or developed by the Contractor in the performance of the services provided under the Contract and the right to use such software programs. The State is granted the non-transferrable, non-exclusive, and limited right to use the System and its operational products only as necessary to carry out the terms of the Contract. Upon the expiration or termination of the Contract, any such right of the State to use the Systems, software, and products shall cease.

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures. The provisions of this section shall not prohibit or otherwise interfere with or prevent the Contractor from continuing to develop and refine its Systems and procedures.

2.280 Extended Purchasing - Reserved

2.290 Environmental Provision - Reserved

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 1
Account Maintenance Fee

Total Portfolio	AMF Paid by ED	% Charged by Servicer		Amount of Loans Outstanding	Average Annual Fee	Five Year Total
a) \$2,999,999.99 or less	0.06%	0.039%	X	\$2,260,600,685.00	\$881,634.00	\$4,408,171.00
b) \$3,000,000,000 to \$3,099,999,999.99	0.06%		X	\$3,000,000,000.00		
c) \$3,100,000,000 to \$3,199,999,999.99	0.06%		X	\$3,100,000,000.00		
d) \$3,200,000,000 to \$3,299,999,999.99	0.06%		X	\$3,200,000,000.00		
e) \$3,300,000,000 to \$3,399,999,999.99	0.06%		X	\$3,300,000,000.00		
f) \$3,400,000,000 to \$3,499,999,999.99	0.06%		X	\$3,400,000,000.00		
g) \$3,500,000,000 to \$3,599,999,999.99	0.06%		X	\$3,500,000,000.00		
h) \$3,600,000,000 to \$3,699,999,999.99	0.06%		X	\$3,600,000,000.00		
i) \$3,700,000,000 to \$3,799,999,999.99	0.06%		X	\$3,700,000,000.00		
j) \$3,800,000,000 to \$3,899,999,999.99	0.06%		X	\$3,800,000,000.00		
k) \$3,900,000,000 to \$3,999,999,999.99	0.06%		X	\$3,900,000,000.00		
l) \$4,000,000,000 to \$4,099,999,999.99	0.06%		X	\$4,000,000,000.00		
m)\$4,100,000,000 or greater	0.06%		X	\$4,100,000,000.00		



Attachment 2
Default Aversions Services Price

Tasks	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Option 1 (Default Aversion Service performed by Contractor)						
a) Program Conversion						
Annual Cures: Rate 0.15%	\$1,200,000,000	\$1,200,000,000	\$1,200,000,000	\$1,100,000,000	\$1,000,000,000	
b) Cost per Dollar Amount Cured*:						
1. \$0 to \$499,999.99						
2. \$500,000 to \$749,999.99						
3. \$750,000 to 999,999.99						
4. \$1,000,000 to \$1,249,999.99	\$1,800,000.00	\$1,800,000.00	\$1,800,000.00	\$1,650,000.00	\$1,500,000.00	\$8,550,000.00
5. \$1,250,000 to \$1,499,999.99						
6. \$1,500,000 to \$1,749,999.99						
7. \$1,750,000 to \$1,999,999.99						
8. \$2,000,000 and greater						
d) Program Conversion/Turnover						
Option 2 (Contractor provides System/Software for MGA Staff to perform Default Aversions)						
a) Program Conversion						
b) System/Software for in-house staff	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00	\$500,000.00
c) Processing DAAR's						
d) Interface with outside contractor sending DAAR's for processing	N/A	N/A	N/A	N/A	N/A	
e) Outside contractor information interface	N/A	N/A	N/A	N/A	N/A	
f) print and mail correspondence at contractor site	\$199,600.00	\$199,600.00	\$199,600.00	\$199,600.00	\$199,600.00	\$998,000.00
g) Program Conversion/Turnover						



Attachment 3
Collections Price

Tasks	Year 1	Year 2	Year 3	Year 4	Year 5	Total
a) In House Collection System						
b) Printing and Mailing/Billing Dunning Notices	\$145,000.00	\$145,000.00	\$145,000.00	\$145,000.00	\$145,000.00	\$725,000.00

c) Collection Fees based on estimated collection volume; actual collection fees will apply

1. Direct Recoveries \$7,000,000 \$7,000,000 \$7,000,000 \$7,000,000 \$7,000,000

Range		Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	From	To						
a)	\$0	\$1,999,999	12.75%					
b)	\$2,000,000	\$3,999,999	12.75%					
c)	\$4,000,000	\$5,999,999	12.75%					
d)	\$6,000,000	\$7,999,999	12.75%	\$892,500.00	\$892,500.00	\$892,500.00	\$892,500.00	\$4,462,500.00
e)	\$8,000,000	\$9,999,999	12.75%					
f)	\$10,000,000	\$11,999,999	12.75%					
g)	\$12,000,000		12.75%					

2. Rehabilitations \$20,000,000 \$20,000,000 \$20,000,000 \$20,000,000 \$20,000,000

Range		Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	From	To						
a)	\$0	\$4,999,999	19.75%					
b)	\$5,000,000	\$8,999,999	19.75%					
c)	\$9,000,000	\$12,999,999	19.75%					
d)	\$13,000,000	\$16,999,999	19.75%					
e)	\$17,000,000	\$20,999,999	19.75%	\$987,500.00				\$987,500.00
effective 7/1/2014		11.15%	\$1,672,500.00	\$2,230,000.00	\$2,230,000.00	\$2,230,000.00	\$2,230,000.00	\$10,592,500.00
f)	\$21,000,000	\$24,999,999	19.75%					
g)	\$25,000,000	\$28,999,999	19.75%					
h)	\$29,000,000	\$32,999,999	19.75%					
i)	\$33,000,000	and above	19.75%					

3. FDLP Consolidations \$25,000,000 \$25,000,000 \$25,000,000 \$25,000,000 \$25,000,000

Range		Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Total
	From	To						
a)	\$0	\$9,999,999	4.95%					
b)	\$10,000,000	\$15,999,999	4.95%					
c)	\$16,000,000	\$19,999,999	4.95%					
d)	\$20,000,000	\$24,999,999	4.95%					
e)	\$25,000,000	\$29,999,999	4.95%	\$1,237,500.00	\$1,237,500.00	\$1,237,500.00	\$1,237,500.00	\$6,187,500.00
f)	\$30,000,000	\$34,999,999	4.95%					
g)	\$35,000,000	\$39,999,999	4.95%					
h)	\$40,000,000	and above	4.95%					

d) Default Collection Portfolio Staff Services

1) Certification and Tracking						
2) Post Claim Assistance to Borrowers						

Grand Total	\$4,935,000.00	\$4,505,000.00	\$4,505,000.00	\$4,505,000.00	\$4,505,000.00	\$22,955,000.00
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Attachment 4
Forms Estimate and Price

MGA Forms
One-Year Usage/On Hand

Name	Estimated Quantity	Unit Cost	Unit Cost Above Estimate Quantity	Total Annual Cost Based on Estimated Quantity	5-Year Cost
Checkfree Brochure	10,000	\$197	\$197.00	\$1,970.00	\$9,850.00
Loan Maintenance	100	\$.52/side	\$1.04	\$104.00	\$520.00
Borrower/Student Personal Information	100	\$.52/side	\$1.04	\$104.00	\$520.00
Sub/Unsub Reallocation	100	\$.52/side	\$1.04	\$104.00	\$520.00
Loan Change	100	\$.52/side	\$1.04	\$104.00	\$520.00
Loan Transfer	100	\$.52/side	\$1.04	\$104.00	\$520.00
Social Security Number Change	100	\$.52/side	\$1.04	\$104.00	\$520.00
Request for Claim Reimbursement	100	\$.52/side	\$1.04	\$104.00	\$520.00
				\$2,698.00	\$13,490.00

All Department of Education forms will be provided to MGA at no cost.

**Please note: Contractor uses Standard Register for all forms printing. The MGA forms listed above have not been provided to Standard Register for set-up and pricing. The unit prices shown reflect the Contractors internal printing costs before this function was outsourced and is provided as an estimate in the absence of actual forms costs. Contractor believes these costs fairly represent future costs for such forms. Actual forms costs will apply.



Attachment 5
Michigan Guaranty Agency Servicing

Tasks	Unit Price	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Program Conversion (Section 1.022.2)							
a) Computer Facilities Management							
Program Operations Service Fees (Section 1.022.4)							
a) Account Maintenance Fee (See attachment 1)		\$1,014,000.00	\$943,020.00	\$877,009.00	\$815,618.00	\$758,525.00	\$4,408,171.00
b) Default Aversions Services (See attachment 2) Option 1		\$1,800,000.00	\$1,800,000.00	\$1,800,000.00	\$1,650,000.00	\$1,500,000.00	\$8,550,000.00
c) Claim Review	\$9.85	\$226,550.00	\$215,223.00	\$204,461.00	\$194,238.00	\$184,526.00	\$1,024,999.00
d) Collections Total (See attachment 3)		\$4,935,000.00	\$4,505,000.00	\$4,505,000.00	\$4,505,000.00	\$4,505,000.00	\$22,955,000.00
(i) Administrative Law Judge (Section 1.022.4F, 2 b viii)		\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$1,000,000.00
e) Interfacing with Default Aversions Contractor (Section 1.022.4B)							
f) Borrower Delinquency/Default Self Service Internet Site (Section 1.022.4D)		\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$200,000.00
g) Auto Dialer (Section 1.022.4E)							
Forms Management and Distribution (Section 1.022.5)							
a) Printing, Storage, and Distribution (See attachment 4)		\$2,698.00	\$2,698.00	\$2,698.00	\$2,698.00	\$2,698.00	\$13,490.00
School and Lender Support (Section 1.022.6)							
a) Deleted N/A							
b) Deleted – N/A							
c) Discretionary School and Lender Support		\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$200,000.00	\$1,000,000.00
d) Deleted N/A							
e) Deleted – N/A							
Computer Software Maintenance and Enhancements (Section 1.022.7)							
a) Maintenance and Enhancements							
b) Programming Hourly Rate 1) 4,000 Programmer Hours per Year		\$105.00 \$420,000.00	\$105.00 \$420,000.00	\$105.00 \$420,000.00	\$105.00 \$420,000.00	\$105.00 \$420,000.00	\$2,100,000.00
Reports (Section 1.042)							
a) Daily, Weekly, Monthly and Annual reports							
b) Ad Hoc Reporting							
Program Conversion/Turnover (Section 1.022.8)						\$525,000.00	\$525,000.00
Grand Total		\$8,838,248.00	\$8,325,941.00	\$8,249,168.00	\$8,027,554.00	\$8,335,749.00	\$41,776,660.00
Split by Contract							
Sallie Mae, Inc. as Servicer		\$7,038,248.00	\$6,525,941.00	\$6,449,168.00	\$6,377,554.00	\$6,835,749.00	\$33,226,660.00
Student Assistance Corp as Default Aversions Servicer		\$1,800,000.00	\$1,800,000.00	\$1,800,000.00	\$1,650,000.00	\$1,500,000.00	\$8,550,000.00



Exhibit A-1

Michigan Guaranty Agency Support Strategy/Objectives			
	Function	Computer System Development/Processing Services/Maintenance	Administrative Staffing
A	Borrower Account Maintenance	S	S
B	Default Aversions	D	D and/or M
C	Claims Processing	S	S and/or M
D	Borrower Delinquency/Default Self-Serve Internet Site	S	S
E	Auto-dialer	N/A	N/A
F	Collections	S	S/M
G	School/Lender File Maintenance	S	S/M
H	Federal Reporting	S	S/M
I	School and Lender Program Review/Technical Assistance Support Services	S	S/M
	Legend: S = Servicer D = Default Aversions Contractor M = Michigan Guaranty Agency N/A = Not Applicable		



Appendix B

Form 4621, What Is An Incident? (Brochure)

Exhibit 2

Michigan Department of Treasury
4621 (3-08)

What is an Incident? What is a Security Breach?

What is an Incident?

An incident is any event threatening some aspects of physical or financial security, when financial resources or items valued at \$100 or more are missing or misused, any event violating confidentiality or privacy of information, where data is manipulated or missing, or any event involving unauthorized or unlawful activity.

Examples of Incidents:

- Missing computer equipment containing non-personal information
- Missing briefcase that contains non-personal information.

Examples of Material Incidents:

- Missing laptop computer or other mobile device or paper records that do not contain Treasury personal information but do contain confidential or sensitive information
- Missing warrant stock.

What makes an incident a Security Breach?

An incident becomes a security breach when an unauthorized person gains access to or acquires:

1. Unencrypted or unredacted (data not altered or truncated) personal information, or
2. The encryption key to an area storing personal information.

Beware: An incident can become a potential security breach during the investigation process.

Examples of a Potential/Actual Security Breach:

- Missing laptop computer or other mobile device that contains Treasury personal information
- Missing paper records that contain personal information
- Accessing personal information when there is no business need for it
- Using another individual's User ID and Password to access personal information
- Stealing Treasury records that include personal information
- Hacking into records containing Treasury personal information
- Obtaining Treasury personal information from employees without proper authorization to access the information
- Unauthorized and unescorted persons entering secure areas that house personal information.

What is Personal Information?

The Identify Theft Protection Act, Public Act 452 of 2004, as amended, defines personal information as information containing the first name or initial of the first name and the last name along with one of the following:

1. Social Security number
2. Driver's License number or State Personal Identification card number
3. Account number; Credit or Debit Card number in

combination with any required security code, access code or password that would permit access to a person's financial account.

Personal information may be in written or printed form or may reside electronically on devices such as mainframes, servers, personal computers (desktops and laptops), CDs, DVDs, tapes, flash drives, memory sticks, USB keys, microfiche, PDAs, Blackberrys, cell phones, or may exist on other state-of-the-art devices that have been or may be developed.

What should I do if my laptop is missing or if an incident is suspected?

Employee must:

1. File a report with local police immediately if asset valued at \$100 or more is missing.
2. Notify immediate supervisor no later than beginning of the next business day.
3. Complete Parts 1 and 2 of Form 4000, *Incident Report* (available on Treasury's Intranet).
4. Forward the Incident Report (with attached police report if applicable) to immediate supervisor and a copy to the Department of Treasury, Security Division.

Management Staff must:

1. Report the incident immediately through the chain of command to the Treasury Division Administrator and the Security Division. If personal information is involved, follow the guidelines for Security Breach.

Exception: If another state agency/governmental entity, report incident to Treasury Disclosure Officer, Technical Services Division and the Security Division. If contractor or vendor, report incident to Contract Compliance Inspector and the Security Division.

2. The Division Administrator must notify the Bureau Director if it is a material incident or involves non-Treasury information.

3. The Bureau Director must notify the other entity immediately.

4. The Division Administrator must inform the Department of Information Technology (DIT) Agency Services (Treasury) Director right away if incident involves information technology resources.

5. Notify other Treasury divisions/offices that may be affected or should be involved with investigation.

6. Investigate and resolve the incident.

7. Finalize Form 4000* and submit it to the Department of Treasury, Security Division.

*Another entity may substitute its internal form for form 4000 if all pertinent information is included.

What should I do if I witness, discover, or am informed of a potential security breach?

Employee must:

1. Report the security breach immediately (no later than beginning of the next business day) to immediate supervisor.

Exhibit 2 - Page 1 of 2



2. Complete Parts 1 and 2 of Form 4000.
3. Forward Form 4000 (with attached police report if applicable) to immediate supervisor and a copy to the Department of Treasury, Security Division.

Management Staff must:

1. If the breach is ongoing, **CONTAIN IT**.
2. Report the potential breach immediately through the chain of command to the Bureau Director or Deputy Treasurer, whichever is applicable.
3. The Bureau Director or the Deputy Treasurer, whichever is applicable, must notify the Chief Deputy Treasurer immediately if a breach involving a database of personal information.
4. The Bureau Director must notify the other entity if the potential breach involves non-Treasury information.
5. The Division Administrator must inform the DIT Agency Services (Treasury) Director right away if incident involves information technology resources and personal information.
6. Convene appropriate personnel so the scope of the breach can be determined and a plan for appropriate action can be agreed upon.

Note: If a database of personal information is involved, the Chief Deputy Treasurer must approve the Plan of Action.

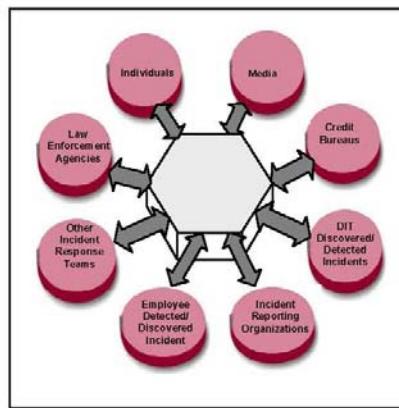
7. If appropriate, issue breach notifications by telephone, in writing, on the Web or by e-mail.
8. Notify the three major credit bureaus of the breach if more than 1,000 residents of the State of Michigan will receive or have received breach notifications.
9. Finalize Form 4000* and submit it to the Department of Treasury, Security Division.

*Another entity may substitute its internal form for form 4000 if all pertinent information is included.

Treasury must protect personal information against risks such as unauthorized access, modification or loss with reasonable security safeguards. Some safeguards are:

- Do not store confidential, personal or sensitive Treasury information on mobile devices or portable media (including laptops, notebooks, memory sticks, CDs, DVDs, floppies) unencrypted; otherwise ENCRYPT files or the full disk. (Refer to DIT Standard 1340, Storing and Managing Personal Identifying/Sensitive Information on Mobile Devices and Portable Media; also refer to Treasury Policy ET-03169 Data Security).
- Avoid sending or receiving unencrypted confidential, personal or sensitive information via e-mail.
- Avoid sending confidential, personal or sensitive information via fax.
- Secure confidential, personal or sensitive papers on the fax, printer or copy machines.
- Keep conversations at a volume level and/or in a location that will protect information.
- Back up data on a regular basis; make sure data files from an approved portable device are stored on the network server.
- Never store more data than needed.

- Shred documents with confidential, personal or sensitive information (see Treasury Policy ET-03115 Confidential Information, Handle and Discard).
- Have computers and hard drives properly wiped or overwritten when discarding (see DIT Procedure 1350.90, Secure Disposal of Installed and Removable Digital Media and Treasury Policy ET-03169).
- Use a log-in password that is not easily guessed. Make it at least eight characters long, composed of upper- and lower-case letters, numbers and symbols such as “#” (see Treasury Policy ET-03175 on Passwords).
- Never set any log-in dialog box to remember your password (see Treasury Policy ET-03175 on Passwords).
- Use a password-protected screen saver that comes on after a few minutes of inactivity. Initiate screen lock system (if a Treasury employee, press the key with Microsoft Windows logo and “L” on the keyboard) when you leave your office, even for a short period.
- Limit access to confidential, personal or sensitive information to those who need to use it to perform their job duties (see Treasury Policy ET-03164 Access Control).



For additional information, see the following guidelines in the Security Guide:

ET-03180, Incident Reporting
 BT-03084, Security Breach Involving Personal Information
 PT-03253, Incident Reporting and Handling
 CT-03070, Incident/Security Breach Examples
 DIT Operating Procedure, How to Handle a Breach of Personal Identifiable / Sensitive Information Incidents

Other References:

BT-03049, Employee Conduct, General Guidelines
 ET-03140 Workplace Safety
 PT-03246, Potential Dangerous Taxpayer/Debtor, Report
 PT-03095, Theft or Irregularities in Public Funds/Property or Violations of Departmental Policies and Procedures, Report and Investigate

Contact Information:

If questions, please contact Division/Bureau Security Liaison or the Security Division at (517) 636-4081.

Exhibit 2 - Page 2 of 2