STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
320 S. Walnut Street 2nd Floor Lansing, MI 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **12**
to
Contract Number **MA071B2200046C**

CONTRACTOR	
	Datix (USA) Inc.
	311 S. Wacker Drive Suite 4900
	Chicago IL 60606
	Garrett Burns
	312-724-7776
	gburns@rldatix.com
	CV0002070

STATE			
	Program Manager	Various	Various
	Contract Administrator	Robin Lampert	DTMB
		(517) 582-2746	
		LampertR1@michigan.gov	

CONTRACT SUMMARY			
CONTRAXX Contract Management Software Maintenance and Support			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 1, 2011	October 31, 2016	5 Months	October 31, 2025
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ Direct Voucher (PRC) ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☒	1 Years	October 31, 2026
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$1,723,102.28	$164,825.34	$1,887,927.62		

DESCRIPTION
Effective May 1, 2025, this Contract is extended 1 year and is increased by $164,825.34. The revised contract expiration date is October 31, 2026. The following amendments are incorporated into this Contract per attached Statement of Work: • Transition to SendGrid • Extension for assistance with transition to replacement contract with new vendor Please note the MDOT Program Manager has been changed to Michael Meddaugh. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on July 15, 2025.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov
MDOT	Michael Meddaugh	517-342-4856	MeddaughM@michigan.gov

MICHIGAN DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK

Project Title: CTRAK Data Mapping Assistance	Period of Coverage: 5/1/2025 to 10/31/2026
Requesting Department: MDOT	Date: 3/3/2025
Agency Program Manager: Nicole Wolf	Phone: 517-930-7826
DTMB Program Manager: Jeffrey LaBean	Phone: 517-243-1743

BRIEF DESCRIPTION OF SERVICES TO BE PROVIDED:

The State will be transitioning away from this contract. An extension is needed to prevent any loss of service before the new solution is fully implemented. Additional funding is also needed to reimburse the Contractor for any assistance provided for the overall transition and the State's transition to using SendGrid for transactional emails.

BACKGROUND:

CTRAK is currently being utilized by MDOT to track consultant contracts and agreements from the time the Request for Proposal (RFP) is received until the contract is authorized. The CTRAK application and database are hosted on-premises, and the database table structures and entity relationships are technically complex. The State is transitioning away from this contract, which already defines Transition Responsibilities under Article 2. Terms and Conditions, 2.170 Transition Responsibilities. This Statement of Work will provide an avenue for payment as noted under 2.175 Transition Payments. The State is also replacing its on-premises Simple Mail Transport Protocol (SMTP) Relay service with Twilio SendGrid cloud-base service for transactional emails. SMTP Relay will not be supported after the end of 2025.

PROJECT OBJECTIVE:

Extend the current contract twelve (12) months, November 1st, 2025, to October 31st, 2026, to account for the additional time needed before the CTRAK replacement is fully implemented and CTRAK is no longer needed when the State has successfully transitioned from CTRAK to the new system and from using SMTP to SendGrid.

SCOPE OF WORK:

Contractor will provide any assistance the State requires for transition from CTRAK, including, but not limited to data mapping, data cleansing, data migration, and documentation, and transition to using SendGrid, labeled herein as "Transition Assistance".

TASKS:

Task	Description	Hours	Estimate
1	Twelve-month extension	---	$124,547.34
2	Transition Assistance as requested by the State	150	$40,278.00
	Total		$164,825.34

The total fees for Transition Assistance are not to exceed $40,278 based on an hourly rate of $271.52 per hour.

DELIVERABLES:

Deliverables will not be considered complete until both Program Managers have formally accepted them.

Deliverables for this project include:

- Meeting participation, as requested by any party (State, Contractor, or new COTS vendor)
- Requested documentation, if needed
- Completion of all Transition Assistance requested
- Monthly invoice showing a breakdown of the total hours and costs expended against each deliverable (meeting participation, documentation prep and delivery, type of Transition Assistance provided, other), along with a cumulative summary of all hours and costs expended to date.

ACCEPTANCE CRITERIA:

The State will review each monthly invoice to ensure acceptance of the hours and costs reported in relation to the assistance requested and provided. Final acceptance and

payment will be provided once the transition from CTRAK to the new COTS system has been determined to be complete.

PAYMENT SCHEDULE:

DTMB will issue payment(s) to the Contractor for the twelve-month extension on a quarterly basis (one quarter of the twelve-month estimate in November 2025, February 2026, May 2026, and August 2026) upon receipt of the approved and properly completed invoice(s) which shall be submitted to the billing address on the State issued purchase order (DOIT1).

DTMB will issue payment(s) to the Contractor for Transition Assistance upon satisfactory receipt of the approved and properly completed invoice(s) which shall be submitted to the billing address on the State issued purchase order not more than monthly. Each Transition Assistance invoice must include a breakdown of the total hours and costs expended against each deliverable (meeting participation, documentation prep and delivery, type of Transition Assistance provided, other), along with a cumulative summary of all hours and costs expended to date.

DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Program Manager approvals. All invoices should reflect actual work completed by payment date and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, fees, and include the appropriate DOIT1 ID. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc.

PROJECT CONTACTS:

The designated Agency Program Manager is:

Nicole Wolf
MDOT – Contract Services Division
Van Wagoner Building
425 W. Ottawa St.
Lansing, Mi, 48933
517-930-7826
wolfn@michigan.gov

The designated DTMB Program Manager is:

Jeffrey LaBean
DTMB - Agency Services supporting MDOT
Van Wagoner Building
425 W. Ottawa St.
Lansing, MI 48933
517-243-1743
labeanj@michigan.gov

AGENCY RESPONSIBILITIES:

Complete data validation and user acceptance testing; review and approval of the deliverables and submitted invoice(s).

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Contractor will work at their offices. No work is required on site at MDOT.

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted.

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

Department of Technology, Management, and Budget
320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **11**

to

Contract Number **071B2200046**

CONTRACTOR	
	Datix (USA) Inc.
	311 S. Wacker Drive , Suite 4900
	Chicago, IL 60606
	Garrett Burns
	312-724-7776
	gburns@rldatix.com
	VS0269097

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Robin Lampert	DTMB
		517-582-2746	
		lampertr1@michigan.gov	

CONTRACT SUMMARY			
CONTRAXX CONTRACT MANAGEMENT SOFTWARE MAINTENANCE AND SUPPORT			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2025
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ PRC ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		October 31, 2025
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$1,690,519.78	$32,582.40	$1,723,102.18		

DESCRIPTION

Effective October 23, 2023, this Contract is increased by $32,582.40 for MDOT use. The following amendments are incorporated into this Contract per the attached Statement of Work:
* delivery of CTRAK document extraction utility
* integration between CTRAK and ProjectWise
* revised version CTRAK to include all modifications noted in the attached Scope of Work (within the Statement of Work)

Please note the Contract Administrator has been changed to Robin Lampert.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

MICHIGAN DEPARTMENT OF TECHNOLOGY,
MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK

Project Title: **CTRAK ProjectWise Enhancement**	**Period of Coverage:** **10/01/2023 ongoing through completion**
Requesting Department: **MDOT**	**Date:** **09/08/2023**
Agency Project Manager: **Carol Rademacher**	**Phone:** **517-373-3382**
DTMB Project Manager: **Jeffrey LaBean**	**Phone:** **517-243-1743**

Brief Description of Services to be provided:

DTMB is requesting the vendor to provide a utility to extract all existing documents in CTRAK, so they can be uploaded to MDOT's ProjectWise application, along with an integration layer between CTRAK and ProjectWise so documents can be uploaded and downloaded between CTRAK to ProjectWise.

BACKGROUND:

Currently, documents are stored from CTRAK within Oracle database tables as Binary Large Objects (BLOBS). These take up a lot of space, causing database maintenance and backup activities to take significant time and effort to complete. MDOT wants to move these documents from the Oracle database to their ProjectWise application.

PROJECT OBJECTIVE:

The work identified in this Statement of Work will provide MDOT with a utility to extract all existing documents (30,000+) in CTRAK to a folder on the app server, so they can be uploaded to ProjectWise. An integration between CTRAK and ProjectWise will also be added, so users can upload and download documents between CTRAK and ProjectWise.

SCOPE OF WORK:

The vendor will complete all tasks noted below, assist the State of Michigan with implementing the deliverables within our development and testing environments, assist with completing system integration testing and user acceptance testing, and assist with the production implementation and any potential issue resolution, as needed.

TASKS:

Task Item	Description	Estimate
1	Vendor will provide a utility to allow MDOT staff to perform the following with minimal assistance from vendor: a. Extract all existing documents (30,000+) in CTRAK to a folder on the app server (files organized by vendor name/ contract number hierarchy) so documents can be uploaded to ProjectWise. b. Extract will contain the CTRAK unique key for each file. **c.** MDOT will use the utility to provide files to ProjectWise and then load ProjectWise URN for existing embedded file fields back into CTRAK using the unique CTRAK key.	20 hours
2	Vendor will add an integration between CTRAK and ProjectWise so users can upload/download documents from CTRAK to ProjectWise (using the REST API). a. CTRAK will pass the document to ProjectWise and ProjectWise will return an URN. b. CTRAK will store a URN instead of the file.	80 hours
3	Vendor will modify all embedded file fields in CTRAK to work with ProjectWise and support the storage of ProjectWise URN for legacy files.	20 hours
	Total	**120 Hours**

The total fees for this change order are $32,582.40 based on an hourly rate of $271.52/hour.

DELIVERABLES:

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them.

Deliverables for this project include:

- CTRAK document extraction utility
- Integration between CTRAK and ProjectWise
- Revised version of CTRAK to include all modifications noted in the Scope of Work above

ACCEPTANCE CRITERIA:

The document extraction utility and CTRAK and ProjectWise integration have been successfully implemented, tested, and accepted within the State of Michigan's development, test, and production environments.

PAYMENT SCHEDULE:

Payment will be made upon satisfactory acceptance of all deliverable and DTMB will pay CONTRACTOR upon receipt of the final approved and properly completed invoice(s) which

shall be submitted to the billing address on the State issued purchase order not more often than monthly. DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Project Manager approvals. All invoices should reflect actual work completed by payment date and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by the DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc.

PROJECT CONTACTS:

The designated Agency Project Manager is:

Carol Rademacher
MDOT - Contract Services Division
Van Wagoner Building
425 W. Ottawa St.
Lansing, Mi, 48933
517-449-7320
rademacherc@michigan.gov

The designated DTMB Project Manager is:

Jeffrey LaBean
DTMB - Agency Services supporting MDOT
Van Wagoner Building
425 W. Ottawa St.
Lansing, MI 48933
517-243-1743
labeanj@michigan.gov

AGENCY RESPONSIBILITIES:

Complete user acceptance testing, review and approval of the deliverables, and submitted invoice(s).

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work at their offices. No work is required on site at MDOT.

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted.

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

Department of Technology, Management, and Budget
320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **10**

to

Contract Number **071B2200046**

CONTRACTOR	
	Datix (USA) Inc.
	311 S. Wacker Drive , Suite 4900
	Chicago, IL 60606
	Garrett Burns
	312-724-7776
	gburns@rldatix.com
	VS0269097

STATE		
Program Manager	Various	MDOT
Contract Administrator	Christopher Martin	DTMB
	(517) 643-2833	
	martinc20@michigan.gov	

CONTRACT SUMMARY

CONTRAXX CONTRACT MANAGEMENT SOFTWARE MAINTENANCE AND SUPPORT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	2 years	☐		October 31, 2025

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,441,425.10	$249,094.68	$1,690,519.78

DESCRIPTION

Effective September 14, 2023, this Contract is exercising the third and fourth (final) option years and is increased by $249,094.68. The revised contract expiration date is October 31, 2025.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on September 14, 2023.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **9**

to

Contract Number **071B2200046**

CURRENT CONTRACTOR	NEW CONTRACTOR
ECTEON INC	Datix (USA) Inc.
1697 Broadway, Ste. 906	311 S Wacker Drive, Suite 4900
New York, NY 10019	Chicago, IL 60606
Richard Eckerstrom	Garrett Burns
212-268-9800 x245	312-724-7776
reckerstrom@ecteon.com	gburns@rldatix.com
CV0002070	VS0269097

STATE CONTACTS

Program Manager	Various	MDOT	Contract Administrator	Christopher Martin	DTMB
				(517) 643-2833	
				martinc20@michigan.gov	

CONTRACT SUMMARY

CONTRAXX CONTRACT MANAGEMENT SOFTWARE MAINTENANCE AND SUPPORT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

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

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		October 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,441,425.10	$0.00	$1,441,425.10

DESCRIPTION

Effective 2/17/2023, please note the Vendor Name and Number have been changed to Datix (USA) Inc. VS0269097.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
320 S. WALNUT ST., LANSING, MICHIGAN 48933
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **9**

to

Contract Number **071B2200046**

CURRENT CONTRACTOR	NEW CONTRACTOR
ECTEON INC	Datix (USA) Inc.
1697 Broadway, Ste. 906	311 S Wacker Drive, Suite 4900
New York, NY 10019	Chicago, IL 60606
Richard Eckerstrom	Garrett Burns
212-268-9800 x245	312-724-7776
reckerstrom@ecteon.com	gburns@rldatix.com
CV0002070	VS0269097

STATE CONTACTS

Program Manager	Various	MDOT	Contract Administrator	Christopher Martin	DTMB
				(517) 643-2833	
				martinc20@michigan.gov	

CONTRACT SUMMARY

CONTRAXX CONTRACT MANAGEMENT SOFTWARE MAINTENANCE AND SUPPORT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

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

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		October 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,441,425.10	$0.00	$1,441,425.10

DESCRIPTION

Please note the Vendor Name and Number have been changed to Datix (USA) Inc. VS0269097 per attached documents.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for ECTEON, INC., File Number 220325003096 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on March 25, 2022.

Brendan C. Hughes
Executive Deputy Secretary of State

Authentication Number: 100001287793 To Verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at http://ecorp.dos.ny.gov

CT07

CERTIFICATE OF MERGER
OF
ECTEON, INC.
WITH AND INTO
DATIX (USA) INC.

Under Section 907 of the Business Corporation Law

FIRST: The name (and if the name has been changed, the name under which it was formed) and jurisdiction of incorporation of each constituent corporation that is to merge is:

Ecteon, Inc., a New York corporation; and
Datix (USA) Inc., a Delaware corporation.

SECOND: As to each constituent corporation, the designation and number of outstanding shares of each class and series and the voting rights thereof are as follows:

Name of Corporation	Designation and number of shares in each class or series outstanding	Class or series of shares entitled to vote	Class or series entitled to vote as a class
Ecteon, Inc. (a New York corporation)	2,000 shares of Common Stock	2,000 shares of Common Stock	Common Stock
Datix (USA) Inc. (a Delaware corporation)	1,500 shares of Common Stock	1,500 shares of Common Stock	Common Stock

(*If the number of shares is subject to change prior to the effective date, state the manner in which such change may occur.*)

THIRD: The name and jurisdiction of the surviving corporation is "Datix (USA) Inc.", a Delaware corporation, incorporated on the 6th day of May, 2011.

FOURTH: The date when the certificate of incorporation of Ecteon, Inc., a New York corporation, was filed by the Department of State was the 21st day of June, 1989, with the original entity name of Xware, Inc.

FIFTH: The merger is authorized by Ecteon, Inc., a New York corporation in the following manner:

Written Consent by the Board of Directors
Written Consent by the Stockholder

SIXTH: The merger is permitted by the laws of Delaware and is in compliance therewith.

SEVENTH: Datix (USA) Inc., a Delaware corporation, agrees that it may be served with process in the State of New York in any action or special proceeding for the enforcement of any

Filed with the NYS Department of State on 03/25/2022
Filing Number: 220325003095 DOS ID: 6440604

liability or obligation of any domestic constituent corporation or of any foreign constituent corporation previously amendable to suit in the State of New York, and for the enforcement under the Business Corporation Law, of the right of shareholders of any constituent domestic corporation to receive payment for their shares against the surviving corporation.

EIGHTH: Datix (USA) Inc., a Delaware corporation, designates the Secretary of State of New York as its agent upon whom process against it may be served in the manner set forth in paragraph (b) of Section 306 of the Business Corporation Law, in any action or special proceeding. The address to which the Secretary of State shall mail a copy of any process against it served upon it is c/o American Incorporators Ltd., 1013 Centre Road, Suite 403-A, Wilmington, Delaware 19805.

NINTH: Datix (USA) Inc., a Delaware corporation, agrees that, subject to the provision of Section 623 of the Business Corporation Law, it will promptly pay to the shareholders of each constituent domestic corporation the amount, if any, to which they shall be entitled under the provisions of the Business Corporation Law, relating to the right of the shareholders to receive payment for their shares.

TENTH: Ecteon, Inc. a New York corporation, hereby certifies that all fees and taxes, including penalties and interest, administered by the Department of Taxation and Finance of the State of New York which are now due and payable by it has been paid and that a cessation franchise tax report, estimated or final, through the anticipated date of the merger has been filed.

ELEVENTH: Datix (USA) Inc., a Delaware corporation, hereby agrees that it will within 30 days after the filing of the certificate of merger file the cessation franchise tax report, if an estimated report was previously filed, and promptly pay to the Department of Taxation and Finance of the State of New York all fees and taxes, including penalties and interest, if any, due to the Department of Taxation and Finance by each constituent domestic corporation.

TWELFTH: Datix (USA) Inc., a Delaware corporation, has not filed an application for authority in New York and will not conduct business until they do so.

THIRTEENTH: The agreement of merger has been approved and executed by each of the constituent corporations that is a party thereto.

FOURTEENTH: The effective date of the merger is the date of filing.

FIFTEENTH: The Agreement of Merger is on file at the following place of business of the surviving corporation:

Datix (USA) Inc.
311 S Wacker Drive, Suite 4900
Chicago, IL 60606

SIXTEENTH: A copy of the agreement of merger will be furnished by the surviving corporation on request and without cost to any member of any constituent corporation or to any person holding an interest in any other business entity that is to merge pursuant to such agreement.

Filed with the NYS Department of State on 03/25/2022
Filing Number: 220325003095 DOS ID: 6440604

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Merger on behalf of each of the participating entities hereto:

ECTEON, INC.,
a New York Corporation

By: _____
Name: Todd Venetianer
Its: Chief Operating Officer

DATIX (USA) INC.,
a Delaware Corporation

By: _____
Name: Peter Holbrook
Title: Vice President

[Signature Page to New York Certificate of Merger of Ecteon, Inc. with and into Datix (USA) Inc.]

Filed with the NYS Department of State on 03/25/2022
Filing Number: 220325003095 DOS ID: 6440604

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Merger on behalf of each of the participating entities hereto:

ECTEON, INC.,
a New York Corporation

By:_____
Name: Todd Venetianer
Its: Chief Operating Officer

DATIX (USA) INC.,
a Delaware Corporation

By:_____
Name: Peter Holbrook
Title: Vice President

[Signature Page to New York Certificate of Merger of Ecteon, Inc. with and into Datix (USA) Inc.]

Filed with the NYS Department of State on 03/25/2022
Filing Number: 220325003095 DOS ID: 6440604

CT07

CERTIFICATE OF MERGER

OF

ECTEON, INC.

WITH AND INTO

DATIX (USA) INC.

Under Section 907 of the Business Corporation Law

RECEIVED
2022 MAR 25 PM 2:02

Kirkland & Ellis LLP
555 California Street
San Francisco, California 94104

DRAWDOWN
CST REF: 14234749LP
2 of 2

Filed with the NYS Department of State on 03/25/2022
Filing Number: 220325003095 DOS ID: 6440604

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"ECTEON, INC.", A NEW YORK CORPORATION,

WITH AND INTO "DATIX (USA) INC." UNDER THE NAME OF "DATIX (USA) INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF MARCH, A.D. 2022, AT 9:13 O`CLOCK A.M.

Jeffrey W. Bullock, Secretary of State

4979025 8100M
SR# 20221156463

Authentication: 203007190
Date: 03-25-22

You may verify this certificate online at corp.delaware.gov/authver.shtml

STATE OF DELAWARE
CERTIFICATE OF MERGER OF
FOREIGN CORPORATION INTO
A DOMESTIC CORPORATION

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Datix (USA) Inc., a Delaware corporation, and the name of the corporation being merged into this surviving corporation is Ecteon, Inc., a New York corporation.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation is Datix (USA) Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

FIFTH: The authorized stock and par value of the non-Delaware corporation is 200 shares at $0.00.

SIXTH: The merger is to become effective upon filing.

SEVENTH: The Agreement of Merger is on file at 5214 Maryland Way, Suite 110 Brentwood, TN 37027, an office of the surviving corporation.

EIGHTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, this 25 day of March, 2022.

DATIX (USA) INC.

By: _____

Name: Peter Holbrook
Title: Vice President

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:13 AM 03/25/2022
FILED 09:13 AM 03/25/2022
SR 20221156463 - File Number 4979025

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

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 **8**

to

Contract Number **071B2200046**

CONTRACTOR	
	ECTEON INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY

MAINTENANCE AND SUPPORT FOR SOFTWARE FOR CONTRACT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-Card ☐ PRC ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		October 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,428,392.10	$13,033.00	$1,441,425.10

DESCRIPTION

Effective 9/20/2021, , the following amendments is incorporated into this Contract per attached Statement of Work. This change includes adding MILogin Single Sign On to the CTRAK Dev, QA, and Production environments. The total cost of these enhancements is not to exceed $13,033.00. The value of this Contract is increased by $13,033.00.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK

Project Title: **CTRAK – MILogin Single Sign-On (SSO)**	**Period of Coverage:** **September 2021 – November 2021**
Requesting Department: **MDOT Bureau of Finance and Administration**	**Date:** **8/25/2021**
Agency Project Manager: **Carol Rademacher**	**Phone:** **517-449-7320**
DTMB IT ManagerContract Owner : **Joe Bruewer**	**Phone:** **517-242-8439**

Brief Description of Services to be provided:
To integrate CTRAK 9.2 with the MILogin for Worker (Internal) enterprise portal using the SAML 2.0 Federation-based integration SSO mechanism.

BACKGROUND:
CTRAK is in the process of upgrading from current client/server version of 8.2 to the latest web based version 9.2 which makes the integration with MIlogin Single Sign On (SSO) possible. During the CTRAK 9.2 project planning meetings, MDOT expressed the need to integrate CTRAK with Milogin for version 9.2 upgrade.

PROJECT OBJECTIVE:
The purpose of this Statement of Work (SOW) is to solicit Ecteon to assist with and complete the necessary activities to integrate CTRAK with the MILogin for Worker (Internal) DTMB Enterprise portal using the SAML 2.0 Federation-based integration SSO mechanism.

SCOPE OF WORK:
Ecteon will review the State of Michigan-MILogin Design Document for Pre-built Integrations and provide an effort estimate in hours along with costs to complete the CTRAK MILogin integration. Ecteon will then assist the State with integrating MILogin into the CTRAK Development, QA, and Production environments.

TASKS:
Technical support is required to assist with the following tasks:

- Update scripts to support Identity Provider initiated SAML 2.0 integration
- Make sure the scripts support multiple IDP meta data files
- Retrieve user information from SAML Token (user id, first name, last name, email, phone number etc.)
- MILogin and CTRAK need to exchange metadata files. Provide information on how to generate the meta data file once it is deployed in our environments and where to add the MILogin metadata file(s).

Task Item	Description	Estimate
1	Integrate with Customer's SSO, MiLogin using SAML 2.0 (Dev environment)	2 days
2	Integrate with Customer's SSO, MiLogin using SAML 2.0 (QA environment)	2 days
3	Integrate with Customer's SSO, MiLogin using SAML 2.0 (Production environment)	2 days
	Total	6 days

The total fees for this change order are **$13,033** based on the MDOT negotiated rate of $271.52/hour.This work will be conducted on a time and materials basis and will be billed monthly as incurred.

DELIVERABLES:

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them.

- CTRAK Development environment fully integrated with MILogin
- CTRAK QA environment fully integrated with MILogin
- CTRAK Production environment fully integrated with MILogin

ACCEPTANCE CRITERIA:

The CTRAK-MILogin integration has been successfully setup and tested in the development and QA environments and production implementation has been completed and validated.

PROJECT CONTROL AND REPORTS:

A weekly progress report must be submitted to the MDOT/ DTMB Project Managers throughout the life of this project. Each weekly progress report must contain the following:

1. **Hours**: Indicate the number of hours expended during the past two weeks, and the cumulative total to date for the project. Also vendor(s) must state whether the remaining hours are sufficient to complete the project.

2. **Accomplishments**: Vendor(s) must indicate what was worked on and what was completed during the current reporting period.

3. **Funds**: Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

SPECIFIC DEPARTMENT STANDARDS:
Agency standards, if any, in addition to DTMB standards.

PAYMENT SCHEDULE:
Payment will be made upon satisfactory acceptance of all deliverables and DTMB will pay CONTRACTOR upon receipt of the final approved properly completed invoice(s) which must be submitted to the billing address on the State issued purchase order not more often than monthly. DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Project Manager approvals. All invoices must reflect actual work completed by payment date, and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices must describe and document to the State's satisfaction a description of the work performed, the progress of the project, and associated project fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment will be considered timely if made by the DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:
The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc. These expenses will be covered by the corresponding Ecteon and/or CTRAK companies.

PROJECT CONTACTS:

The designated Agency Project Manager is:

Carol Rademacher
MDOT-Bureau of Finance and Administration
Van Wagoner/3rd Floor
425 W. Ottawa St
Lansing, MI 48933
517-449-7320
rademacherc@michigan.gov

The designated DTMB Project Manager is:

Joe Bruewer
DTMB-Agency Services supporting MDOT
CONSTRUCTION & TECHNOLOGY BLDG
8885 Ricks Rd
Dimondale, MI 48821
517-242-8439
bruewerj@michigan.gov

AGENCY RESPONSIBILITIES:
Review and approval of the deliverables and submitted invoice(s).

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:
All work completed by Ecteon and/or CTRAK staff will be done off-site.

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:
Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted.

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

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 **7**

to

Contract Number **071B2200046**

CONTRACTOR	
	ECTEON INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY

MAINTENANCE AND SUPPORT FOR SOFTWARE FOR CONTRACT

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2021

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐	2 one-year	☒	2 years	October 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,179,297.42	$249,094.68	$1,428,392.10

DESCRIPTION

Effective 3/16/2021, this Contract is extended two years, at a cost of $124,147.34 per year for Mantenance and Support, plus $400 per year for the Escrow Fee. The total annual amount is $124,547.34 and this pricing also covers two additional option years. This Contract is increased by $249,094.68. The revised contract expiration date is 10/31/2023.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on 3/16/2021.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
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 **6**

to

Contract Number **071B2200046**

CONTRACTOR	
	ECTEON INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Various	MDOT
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY			
MAINTENANCE AND SUPPORT FOR SOFTWARE FOR CONTRACT			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2020
PAYMENT TERMS		**DELIVERY TIMEFRAME**	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☒	1 year	☐		October 31, 2021

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,089,047.38	$90,250.14	$1,179,297.52

DESCRIPTION

Effective 10/29/2020, this Contract is exercising the fifth and final option year. The Contract is increased by $90,250.14 (including $13,236.86 in previously authorized funds) for the cost of the final option year of $103,487.00. The revised contract expiration date is 10/31/2021.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michigan.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
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 **5**

to

Contract Number **071B2200046**

CONTRACTOR	
	ECTEON INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Multi	MDOT
		Multi	
		Multi	
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY			
MAINTENANCE AND SUPPORT FOR SOFTWARE FOR CONTRACT			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2019
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☐ PRC ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☒	1-year	☐		October 31, 2020
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$967,297.00	$121,750.38	$1,089,047.38		

DESCRIPTION

Effective 9/13/2019, the State is exercising the fourth option year of this Contract and is increased by $121,750.38. The revised contract expiration date is 10/31/2020.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on 10/8/2019.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michgian.gov
DTMB	Jeff LaBean	517-243-1743	labeanj@michigan.gov

5214 Maryland Way, Suite 100
Brentwood, TN 37027
Phone: 615-373-8551 Fax: 615-373-8543
www.ecteon.com

September 12, 2019

Christopher Martin
State of Michigan
Central Procurement Services – Enterprise Sourcing

RE: Contraxx Software Maintenance Renewal – Option year 4 for Contract Number 071B2200046.

Dear Mr. Martin:

Contract Maintenance Agreement between Ecteon, Inc. and Michigan Department of Transportation dated September 28th, 2011.

I am pleased to provide the following renewal of Maintenance Services, per the contract above. The proposed Option 4 renewal is for a term of one year, commencing on November 1, 2019 and ending on October 31st 2020. The maintenance fee for this term is $121,350.38 plus $400 in Escrow Fees. Other than the term, the same terms and conditions will prevail as per the current maintenance agreement.

To accept this proposal, please sign below and fax to my attention at 615-373-8543. I look forward to hearing from you.

Thank you for your continued support of Contraxx. If you have any questions, please call me at 212-268-9800 x 245 or email me at reckerstrom@ecteon.com.

Sincerely,

Richard Eckerstrom
Chief Executive Officer
Ecteon, Inc.

Agreed to and accepted:

By: _____

Title: _____

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES

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 **071B2200046**

CONTRACTOR	
	ECTEON INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Multi	MULTI
		Multi	
		Multi	
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY

MAINTENANCE AND SUPPORT FOR SOFTWARE FOR CONTRACT MANAGEMENT FUNCTIONALITY (PERFORMANCE MONITORING, AMENDEMENTS, CURRENT/HISTORICAL DATA ACCUMULATION, PRICING, PERFORMANCE DOCUMENTATION, VENDOR AND PAYEE MANAGEMENT, CONTRACT COMPLAINCE, SPEND BALANCES)

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2019

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-Card ☐ PRC ☒ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		October 31, 2019

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$950,000.00	$17,297.00	$967,297.00

DESCRIPTION

Effective 2/21/2019, the following amendment is incorporated into this Contract per attached SOW. This Contract is increase by $17,297.00.

Please note the Program Managers have been updated to Carol Rademacher for MDOT and Joe Bruewer for DTMB.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MDOT	Carol Rademacher	517-373-3382	rademacherc@michigan.gov
DTMB	Joe Bruewer	517-322-4954	bruewerj@michgian.gov

MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
IT SERVICES
STATEMENT OF WORK

Project Title: **C-TRAK Enhancements 10102018**	**Period of Coverage:** **10/10/2018 – 10/10/2019**
Requesting Department: **DTMB-AS-MDOT**	**Date:** **2/11/2019**
Agency Project Manager: **Carol Rademacher**	**Phone:** **517-373-3382**
DTMB Project Manager: **Joe Bruewer**	**Phone:** **517-322-4954**

Brief Description of Services to be provided:
Minor Enhancements to C-TRAK application

BACKGROUND:
According to the business areas the Funding tab in C-TRAK contract and authorization records no longer pulled in the accurate information and is no longer used, therefore, the C_TRAK Interface Enhancement list has been changed. After work began on C032 additional minor changes were required and addressed in C033.

PROJECT OBJECTIVE:
Implement Minor Enhancements (CCR-C032 and C033) to C-TRAK application

SCOPE OF WORK:

1. CCR-C032
    a. Changes to Contract and Authorization records in support of changing C-TRAK Interfaces
    b. Changing fields in the Funding Tab – Job # Funding
    c. Remove connection link between C-TRAK and MAIN/MIDB
    d. Remove connection link between C-TRAK and PAB
    e. Remove connection link between C-TRAK and MFOS for the “Federal Project #”
    f. Remove connection link between C-TRAK and MFOS for the “Local %”
    g. Adding new section to the Details tab/Detail section for Contract and Authorization Records
2. CCR-C033
    a. Interface – Remove connection link between C-TRAK and MAIN/MIDB
    b. Interface – Remove connection link between C-TRAK and PAB
    c. Adding new section to the Details tab/Detail section for Contract and Authorization records with the following fields: BFY, CS#, Unit, Activity, Dept Object, Location, Program, Program Phase, Appn, Fund, Reporting Code, and Program Total.
    d. Remove the Funding tab and all validations associated with data in the tab.

TASKS:
Technical support is required to assist with the following tasks:

- Implement Enhanced C-TRAK version

DELIVERABLES:
Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project include:

- Update C-TRAK executable

ACCEPTANCE CRITERIA:
Successful Testing of Proposed Change Description and References within the attached C-TRAK Project Change Control Request (C032 and C033)

SPECIFIC DEPARTMENT STANDARDS:

Agency standards, if any, in addition to DTMB standards.

PAYMENT SCHEDULE:

Payment will be made on a Satisfactory Acceptance of Each Deliverable basis. DTMB will pay CONTRACTOR upon receipt of properly completed invoice(s) which shall be submitted to the billing address on the State issued purchase order not more often than monthly. DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Project Manager approvals. All invoices should reflect actual work completed by payment date and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by the DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc.

PROJECT CONTACTS:

The designated Agency Project Manager is:

Carol Rademacher
MDOT
Contract Services Division
Van Waggoner Building
Lansing, MI, 48914
517-373-3382
rademacherc@michigan.gov

The designated DTMB Project Manager is:

Joe Bruewer
DTMB-AS-MDOT
Construction Delivery Unit
C&T Building
8885 Ricks Rd
Dimondale, MI, 48911
517-322-4954
bruewerj@michigan.gov

AGENCY RESPONSIBILITIES:

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work at their offices. No work is required on site at MDOT

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted.

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 **071B2200046**

CONTRACTOR	
	ECTEON, INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	CV0002070

STATE			
	Program Manager	Jeff LaBean	DTMB-IT
		517-243-1743	
		labeanj@michigan.gov	
	Contract Administrator	Christopher Martin	DTMB
		(517) 643-2833	
		martinc20@michigan.gov	

CONTRACT SUMMARY

CONTRACT MANAGEMENT SYSTEM

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2019

PAYMENT TERMS	DELIVERY TIMEFRAME

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

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1	☐		October 31, 2019

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$850,000.00	$100,000.00	$950,000.00

DESCRIPTION

Effective 8/6/2018, the third option year for maintenance and support for the Contraxx Software is executed and the contract value is increased by $100,000.00 The total maintenance and support cost for the period of 11/1/2018 to 10/31/2019 is $120,721.67.

Please note the Contract Administrator has been changed to Christopher Martin
Please note the Program Manager has been changed to Jeff LaBean

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

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **071B2200046**

CONTRACTOR	
	ECTEON, INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	*******7107

STATE			
	Program Manager	James Osieczonek	DTMB-IT
		517-335-6491	
		osieczonekj@michigan.gov	
	Contract Administrator	Malu Natarajan	DTMB
		(517) 284-7030	
		natarajanm@michigan.gov	

CONTRACT SUMMARY

ECTEON, INC

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2017

PAYMENT TERMS	DELIVERY TIMEFRAME
	N/A

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ 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
☒		☐		October 31, 2018

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$750,000.00	$100,000.00	$850,000.00

DESCRIPTION

Effective September 12, 2017, the second option year for maintenance and support for Contraxx Software is executed and the Contract is increased by $100,000.00. The total maintenance and support cost for the period of 11/1/2017 to 10/31/2018 is $117,232.34. Pleas enote that Contract Administrator is changed to Malu Natarajan. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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 **1**
to
Contract Number **071B2200046**

CONTRACTOR	
	ECTEON, INC
	1697 Broadway, Ste. 906
	New York, NY 10019
	Richard Eckerstrom
	212-268-9800 x245
	reckerstrom@ecteon.com
	*******7107

STATE		
Program Manager	James Osieczonek	DTMB
	517-335-6491	
	osieczonekj@michigan.gov	
Contract Administrator	Terry Mead	DTMB
	(517) 284-7035	
	meadt@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: ECTEON, INC

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
November 1, 2011	October 31, 2016	5 - 1 Year	October 31, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME

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

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1-year	☐		October 31, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$ 750,000.00	$ 0.00	$ 750,000.00

DESCRIPTION: Effective October 7, 2016, the first option year for maintenance and support for Contraxx Software is executed. The total maintenance and support cost for the period of 11/1/2016 to 10/31/2017 will not exceed $136,435.90. This software provides Contract management functionality for MDOT to handle performance monitoring, amendments, and current /historical data accumulation for areas of use, pricing, positive/negative performance documentation, vendor and vendor payee management, milestone and deliverable compliance, spend and contract balances, and market comparison and trends. See attached Statement of Work. All other terms, conditions, specifications and pricing remain the same. Per (DTMB) contractor and agency agreement, and DTMB Procurement approval.

MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET

IT SERVICES

STATEMENT OF WORK

Project Title: Ecteon Contraxx Exercise Option Year	**Period of Coverage:** 11/1/2011to 10/31/2017
Requesting Department: MDOT/Agency Services MDOT	**Date:** 8/3/2016
Agency Project Manager: John Kimble	**Phone:** 517-373-4384
DTMB Project Manager: Chuck Baird	517-243-2873

Brief Description of Services to be provided:

We would like to exercise the first option year of contract 071B2200046, for maintenance and support for Contraxx Software for the period of 11/1/2016 to 10/31/2017.

BACKGROUND:

This software provides Contract Management functionality for MDOT to handle performance monitoring, amendments and current/historical data accumulation for areas of use, pricing, positive/negative performance documentation, Vendor & Vendor Payee Management, milestone and deliverable compliance, spend and contract balances regardless of payment method, and market comparison and trends.

PROJECT OBJECTIVE:

Exercising the first option year of this contract and pay yearly maintenance and support. If we don't pay, yearly maintenance will lapse. The total cost amount for this 1 year period is a not-to-exceed $136,435.90.

SCOPE OF WORK:

We are exercising the option year on the contract to pay yearly maintenance on the Ecteon Contraxx application.

TASKS:

N/A

DELIVERABLES:

N/A

ACCEPTANCE CRITERIA:

Final acceptance is expressly conditioned upon completion and acceptance of all deliverables/milestones, completion of all tasks in the project plan as approved, completion of all applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements.

PROJECT CONTROL AND REPORTS:

Reporting formats must be submitted to the State's Project Managers for approval within ten (10) business days after the effective date of this Contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the Contract. Progress Reports shall be submitted by the Contractor no more than five (5) business days after the end of each month. They shall include, but are not limited to:

- Updated project work plan
- Summary of activity during the report period
- Accomplishments during the report period
- Deliverables status
- Adherence to schedule status
- Action Item status
- Issues encountered during the report period, and resolutions
- Proposed changes for the CCB

SPECIFIC DEPARTMENT STANDARDS:

Agency standards, if any, in addition to DTMB standards.

PAYMENT SCHEDULE:

Maintenance is paid yearly.

EXPENSES:

The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc.

PROJECT CONTACTS:

The designated Agency Project Manager is:

Name John Kimble

Department MDOT

Area

Building/Floor

Address

City/State/Zip

Phone Number 517-373-4384

Fax Number

Email Address kimblej@michigan.gov

The designated DTMB Project Manager is:

Name Chuck Baird

Department DTMB Agency Services/Customer Services

Area

Building/Floor Van Wagoner 3rd Floor

Address 425 W Ottawa St

City/State/Zip Lansing Michigan 48909

Phone Number 517-243-2873

Fax Number

Email Address bairdc@michigan.gov

AGENCY RESPONSIBILITIES:

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work at 425 W Ottawa (Van Wagoner Building) in Lansing, Michigan.

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to in writing.

No overtime will be permitted.

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET November 21, 2011
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B2200046
between
THE STATE OF MICHIGAN
And

Fax: (212) 268-7676

NAME & ADDRESS OF CONTRACTOR **Ecteon, Inc.** **1697 Broadway Ste 906** **New York, NY 10019** reckerstrom@ecteon.com	TELEPHONE (212) 268-9800 x245 Richard Eckerstrom CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 **Steve Motz**
Technical Manager: Simon Wang (517) 335-5292 **MDOT Contract Management Contraxx Software, Maintenance and Support**	
CONTRACT PERIOD: **5yr. + 5 one-year options** From: **November 1, 2011** To: **October 31, 2016**	
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are attached.

Estimated Contract Value: $750,000.00

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

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

CONTRACT NO. 071B2200046
between
THE STATE OF MICHIGAN
And

Fax: (212) 268-7676

NAME & ADDRESS OF CONTRACTOR **Ecteon, Inc.** **1697 Broadway Ste 906** **New York, NY 10019** reckerstrom@ecteon.com	TELEPHONE (212) 268-9800 x245 Richard Eckerstrom CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 **Steve Motz**
Technical Manager: Simon Wang (517) 335-5292	
MDOT Contract Management Contraxx Software, Maintenance and Support	
CONTRACT PERIOD: **5yr. + 5 one-year options** From: **November 1, 2011** To: **October 31, 2016**	
TERMS **Net 30 Days**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are attached. This Contract was awarded on the inquiry of RFP #071I1300265.** **Estimated Contract Value: $750,000.00**	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 071I1300265. Orders for delivery will be issued directly by the Department of Technology, Management and Budget through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Ecteon, Inc. Firm Name	Signature
Authorized Agent Signature	**Jeff Brownlee, Chief Procurement Officer** Name/Title
Authorized Agent (Print or Type)	**DTMB, Procurement** Division
Date	Date

STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B2200046
MDOT Contract Management Contraxx Software, Maintenance and Support

Buyer Name: Steve Motz
Telephone Number: 517-241-3215
E-Mail Address: motzs@michigan.gov

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Article 1 – Statement of Work (SOW)

1.000 Project Identification

1.001 PROJECT REQUEST

The State is seeking maintenance and support for Contraxx software and optional services for future enhancements. This software provides Contract Management functionality for MDOT to handle performance monitoring, amendments and current/historical data accumulation for areas of use, pricing, positive/negative performance documentation, Vendor & Vendor Payee Management, milestone and deliverable compliance, spend and contract balances regardless of payment method, and market comparison and trends.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

This project consists of the following scope:

A. Maintenance and Support
B. Optional Services for Future Enhancements

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 OUT OF SCOPE

The State will host the solution and all hardware and software maintenance related to the hosting will be provided by the State.

1.103 ENVIRONMENT

The bidder must follow the standards for project management, systems engineering, and associated forms and templates found at http://www.michigan.gov/suite.

1.104 Work And Deliverable

See **Attachment 3** (End-User License Agreement) for terms and conditions of the licensee of the contract software previously executed by the parties.

A. Maintenance and Support

The Contractor shall provide maintenance and support of the CONTRAXX software in accordance with the "Contraxx Software Maintenance" ("Maintenance Agreement") set forth in Attachment 2. The Maintenance Agreement shall govern the terms and conditions of the maintenance and support being provided hereunder,

Hardware support will be provided by the State.

B. Optional Enhancements (Bank of Hours)

The State intends to establish funding for up to **800 hours** as per **Attachment 1** over the initial term of the contract for related development. Actual funding for enhancements will occur on a yearly basis, and there is no guarantee as to the level of funding, if any, available to the project. They State may request additional hours if the option years are exercised, or additional unanticipated system modifications are required.

The State will submit a Statement of Work to the Contractor for the work requested and the Contractor will provide a written price proposal. Upon review and approval by the DTMB Technical Manager the Contractor will begin the work.

1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

A. Contractor Staff

The Contractor will identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor shall provide the following points of contact for items related to this Contract:

a) For business terms and initiation of modifications or enhancements to the MDOT Contraxx implementation: Chief Operating Officer, Lonnie Blackwood 615-373-8551 ext 223
b) For specific projects, the Project Manager will be named in the project Statement of Work. For support and error reporting: Director of Customer Support, Kathi Lenz 866-328-3666 or (after setup) support@ecteon.com.

B. On Site Work Requirements

1. Location of Work

The Contractor shall perform work at various State facilities when needed and otherwise at Contractor's Facility.

2. Hours of Operation:

a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

The Technical Manager is identified in Section 2.023:

The Technical Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external Contractors

- Facilitate communication between different State departments/divisions
- Review and Approve Statement of Work, contractor's proposal, and acceptance sign-off
- Resolution of issues
- Documentation and archiving of all important technical decisions
- Arrange, schedule and facilitate State staff attendance at all technical meetings

The State will provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract. This individual is identified in Section 2.022

1.300 Project Plan

1.301 PROJECT PLAN MANAGEMENT - RESERVED

1.302 REPORTS - RESERVED

1.400 Project Management

1.401 ISSUE MANAGEMENT - RESERVED

1.402 RISK MANAGEMENT - RESERVED

1.403 CHANGE MANAGEMENT

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

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

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

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

1.500 Acceptance

1.501 CRITERIA

The State will accept milestones following confirmation that all deliverables described within the milestone have met the requirements of Article 1, Section 1.104.

Service Deliverables

Services include, but are not limited to software development and support.

a. The services will be accepted in accordance with the requirements of this contract.
b. The State will review a 'Request for Approval of Services' within 15 business days of completion or implementation. Approvals will be written and signed by the State Technical Manager with assistance from DTMB. Unacceptable issues will be documented and submitted to the Contractor. After issues are resolved or waived, the Contractor will resubmit a 'Request for Approval of Services' for approval within 15 business days of receipt.
c. The Contractor has the tools and connectivity installed, in compliance with DTMB standards, to properly support and monitor the application.

1.600 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

Attachment 1 provides the pricing tables for Maintenance and Support and Optional Services for Enhancements.

Method of Payment

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

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

For Optional Enhancements payment to the Contractor will be made upon the completion and acceptance of the deliverable.

Travel

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed. All pricing shall be fully loaded.

Statements of Work and Issuance of Purchase Orders

- Unless otherwise agreed by the parties, each Statement of Work will include:
    1. Background
    2. Project Objective
    3. Scope of Work
    4. Deliverables
    5. Acceptance Criteria
    6. Project Control and Reports
    7. Specific Department Standards
    8. Payment Schedule
    9. Travel and Expenses
    10. Project Contacts
    11. Agency Responsibilities and Assumptions
    12. Location of Where the Work is to be performed
    13. Expected Contractor Work Hours and Conditions

- The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

- The State will issue a Purchase Order annually for the following year of maintenance and allocated hours for optional services.

Invoicing

Contractor will submit properly itemized invoices to

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909

or

DTMB-Accounts-Payable@michigan.gov

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

Attachment 1

Pricing

Within the pricing tables, the Contract has identified all information related, directly or indirectly, to the Contractor's proposed charges for services and deliverables including, but not limited to, costs, fees, prices, rates, bonuses, discounts, rebates, or the identification of free services, labor or materials.

Table 1: Summary of the Project Costs

Project Cost(s)	Total Cost ($)	Comments
Maintenance and Support Breakdown in Table 2	$603,169.00	Note the amount listed is the cost cap. See Table 2 Comments.
Future Optional Enhancements/Rate Card (for future enhancements and scope change) Breakdown in Table 3	$144,831.00	See note under Staffing Category.
Software Escrow Breakdown in Table 4	$2,000.00	Note the amount listed is the cost cap. See Table 4 Comments.
Total Cost	**$750,000.00**	

Table 2: Maintenance and Support

	Cost Categories	Total Cost ($)	Comments
A.	**Maintenance and Support cost**		Maintenance and Support cost for the first year shall be $107,000.00 (the "Base Cost"). Maintenance and Support cost for subsequent years shall be the Base Cost which may be increased each year at a rate not to exceed the lesser of 6% per year or the increase in the Consumer Price Index – All Urban Consumers (U.S. All items, 1982-84=100) (or, if not available, a substantially similar widely used successor index) from October 1 of the year that the maintenance fees initially were paid under this RFP through October 1 of the then-current year. *Note the costs listed here are the cost caps; actual costs may be lower.* Escrow fees (below) are separate from and are not included in the Maintenance and Support fee.
	First Year	$107,000.00	
	Second Year	$113,420.00	
	Third Year	$120,225.00	
	Fourth Year	$127,439.00	
	Fifth Year	$135,085.00	
	Combined Total	**$603,169.00**	

Notes:

1. At the State's request Ecteon will provide, within 120 days of notice to Ecteon, upgrades to Contraxx in order to ensure compliance with the latest version of middleware software (e.g., Oracle, Windows Server/IIS, Internet Explorer or other browser software adopted by the State) supported in the State's current technical environment.

Table 3: Future Optional Enhancements/Rate Card

To the extent the parties agree that certain specific services must be provided on a time and materials basis, such services must be provided at the Labor Rates (Not to Exceed Hourly Rate cost column). Future amendments may utilize this rate structure, as agreed between the Contractor and State. Additionally the Contractor may utilize the rates in order to provide the State with a not to exceed fixed price. Bidders must provide hourly rates for all positions identified in the table below. If the State exercises contract option years, the State and Contractor will mutually agree on the hourly rates.

No.	Staffing Category	Not to Exceed Hourly Rate (Year 1-5) On-site	Not to Exceed Hourly Rate (Year 1-5) Off-site	Estimated Hours (Year 1-5)	Total Price for Base Years Multiply Estimated Hours x Hourly Rate (Off-site)
B.	Business / System Analyst/ Project Manager	$225	$220	Varies	Varies
	Programmer/Developer	200	195	Varies	Varies
	QA Tester	120	110	Varies	Varies
	Future Optional Enhancement/Rate Card Estimated Cost	N/A	N/A	800	$144,831.00

Notes:

1. Please refer to section 1.6 Compensation and Payment.
2. The State has identified staffing positions that may be utilized during this contract.
3. Hourly Rates quoted are inclusive of vendor staff and management overhead, travel and all other expenses. Estimated Hours per year and Extended Price are nonbinding and will be used at the State's discretion to determine the estimated Contract value.
4. The State may choose to utilize some or all of the hours quoted. All hours shall to be billed monthly at actual hours utilizing the quoted.
5. The State reserves the right to request additional hours beyond the estimate provided in the table above. Additional hours and funding will be handles through the change control process.
6. Enhancement services rates for the first two years shall be locked in at the rates listed in table 3. Service rates for subsequent years shall be the listed rate, which may be increased each year at a rate not to exceed the lesser of 6% per year or the increase in the Consumer Price Index – All Urban Consumers (U.S. All items, 1982-84=100) (or, if not available, a substantially similar widely used successor index) from October 1 of the year that the maintenance fees initially were paid under this Contract through October 1 of the then-current year. The hourly rates for years 3-5 shall not exceed the following for any given year:

   Business / System Analyst/ Project Manager: $240
   Programmer/Developer: $205
   QA Tester: $135

7. In the event there is unused funding from Table 2, the State may utilize this funding towards future enhancements.

Table 4: Software Escrow

No.	Annual Escrow Amount (Years 1-5)	Total Escrow Amount (Years 1-5)
C.	$400.00	$2,000.00

Escrow

1 Ecteon has entered into an escrow agreement (the "Escrow Agreement") with EscrowTech International Inc. (the "Escrow Agent") whereby Ecteon (the "Owner" in said Escrow Agreement) has delivered and will deliver to the Escrow Agent, pursuant to the terms thereof, a copy of the source code and documentation (both user documentation and technical documentation describing how the code may be compiled and used) for the most recent version (Update) of the Software (the "Deposit" under said agreement). **Upon the State's written request**, Ecteon and The State shall execute and deliver the appropriate documents to enroll The State as a Beneficiary as defined under the Escrow Agreement during the Maintenance Period with the release provisions provided herein.

2 **The State shall pay Ecteon a yearly escrow fee of $400.00 payable in advance, which shall be invoiced annually by Ecteon.** The State shall cooperate and at Ecteon's request, promptly sign and deliver such documents to release superseded versions of Software from the escrow which are not required to be supported under this agreement and in the event that the Maintenance Period is not renewed. If the State fails to deliver its consent to release such version from escrow, or if the State wants to maintain said version in escrow, the State shall pay any costs for maintaining such version in escrow.

3 If Escrow Agent ceases to provide escrow services or at Ecteon's discretion, Ecteon shall be entitled to find a suitable substitute for Escrow Agent, subject to the State's consent, which consent shall not be unreasonably withheld if the State receives the same benefits as provided in the current Escrow Agreement.

4 The State has examined a copy of the Escrow Agreement and accepts the terms thereof subject to the supplemental terms set forth in this agreement.

5 Release Conditions
The Escrow Agreement shall provide that during the Maintenance Period of this Agreement, as extended from time to time, the State ("Beneficiary") shall be entitled to a copy of the Deposit on the following release condition:

Provided that the Beneficiary is current and in compliance with all its obligations to the Owner under the License Agreement, in the event that (a) the Owner, or its successor in interest, ceases to offer Beneficiary a renewal or extension of the existing maintenance Period for the most recent version of the Software then in use; or (b) that Owner materially fails to provide maintenance as required under the Agreement, and this situation has remained uncured for a period of thirty (30) days after written notice from Beneficiary to Owner; or (c) Owner (and its successor in interest) fail to continue to do business in the ordinary course, then the Beneficiary shall have a right to obtain a copy of the source code for the most recent version of the Software then in use together with the related documentation which shall include, at a minimum, all technical documentation and procedures necessary to compile the source code into a format that is usable by the Beneficiary.

6 If the State believes in good faith that a Release Condition has occurred, the parties shall follow the Release procedures set forth in paragraph 11 of the Escrow Agreement.

7 In the event that the State is granted possession of the source code under the Escrow Agreement, the State shall be entitled to use the source code solely for the purposes of maintaining, updating, and/or supporting the licensed Software in accordance with the allowed uses under the License Agreement. The State agrees that such source code is Ecteon's proprietary confidential information, and will not disclose it to any third party except as needed for the limited purposes set forth herein.

8 This Escrow section shall terminate upon a permissible termination of the Software License Agreement, default of the State in the payment of fees due hereunder (which default has not been cured within 30 days after notice), or release of the Deposit (as defined in the escrow agreement) to the State. Upon termination of this agreement, the State shall promptly provide any documents necessary to remove the State as a Beneficiary under the Escrow Agreement. If the State fails to timely provide such release documents, the State shall be reimburse Ecteon for any reasonable legal costs and court costs incurred by Ecteon in obtaining said documents.

9 Upon the State's request, but not more than once per year, the State shall be entitled, as a Beneficiary, to arrange directly with Escrow Agent to have the Escrow Agent perform a technical verification of the Deposit to confirm that the Deposit can be compiled to the then most recent version of the Software. Said technical verification shall be done without the State having access to the Deposit. If Escrow Agent no longer provides this service, Ecteon and the State shall cooperate to find an alternate method of verification, subject to the agreement of both parties. The State shall be responsible for and shall pay for all fees, expenses and costs involved in any verification, including paying directly for any fees and expenses charged by the Escrow Agent in providing such service as well as for Ecteon's services, if any, rendered in connection with such verification, on a time and material basis, at Ecteon's then list prices for consulting.

Attachment 2
Maintenance Agreement

CONTRAXX MAINTENANCE AGREEMENT

1. **Definitions**:

1.1 "Software" means the Modules of the "Contraxx" computer program that have been licensed to Licensee under a separate agreement between Licensor and Licensee of even date herewith (the "License Agreement"), as well as any Updates provided to Licensee under this agreement.

1.2 "Error" means any failure of the Software to conform in any material respect to the Documentation.

1.3 Capitalized terms not defined herein shall have the meanings ascribed to them in the License Agreement.

2. **Term**. Licensor shall provide the standard support and maintenance to the Licensee for an initial period of five years commencing as of the date hereof.

3. **Scope of Maintenance**. During the maintenance term, Licensor agrees to provide certain maintenance services in support of the Software as follows:

3.1. Error Correction. Licensee shall promptly notify Licensor of any Errors in the Software. Licensor shall respond to requests from Licensee for correction of Errors in accordance with Exhibit A. Licensor shall not be responsible for damages resulting from Errors provided Licensor addresses the Errors as provided herein. Licensor shall be entitled to correct Errors by the issuance of an Update that corrects said Error.

3.2. Telephone Hot-Line and E-mail site. Licensor shall maintain 1) a telephone hot-line on business days from 7:00 AM to 7:00 PM Eastern Time; and 2) an e-mail site, that permits the Licensee's permitted agent(s) to report Errors and to seek assistance in use of the Software, including questions about the general functionality of the Software. These support services do not include answering questions regarding content, specific installations on Licensee's hardware, template design, network operations, desktop support, database server operations and end-user help-desk support. Telephone and e-mail inquiries must be placed by Licensee's Agent(s). At Licensee's request, Licensor shall provide training from time to time at Licensor's then current rates. Each Licensee Agent shall have received suitable training in the use of the Software from either i) Licensor, or ii) a current Licensee Agent who has been previously trained by Licensor or a Licensee Agent. Licensee shall have no more than eight (8) Licensee Agent(s). Licensee shall not change the list of Licensee Agents more than once per 6 month period, except in connection with valid business reasons (e.g. termination of employment, transfer to another position).

3.3 Updates and Upgrades. Licensor may, from time to time, issue updates of the Software, containing corrections and/or minor enhancements and/or upgrades of the Software containing major enhancements and possibly containing corrections (collectively referred to as "Updates"). Licensor shall make available to Licensee one (1) copy of each Update for each copy of the Software being maintained under this Agreement. The Updates shall be without charge during the Maintenance Term. Licensee acknowledges that Updates are cumulative, and therefore each Update is useful only if Licensee has obtained and installed all prior applicable Updates. Any Update made available by Licensor will perform in all material respects at the same or greater level of functionality as the Software initially licensed under the License Agreement.

Licensor shall provide the following support in connection with each Update:

1) make available to Licensee on an FTP internet site, a) the Update, b) installation instructions, c) conversion script and instructions (if necessary), and d) documentation of changes reflected in the Update;
2) invite Licensee's agents and employees to an internet web-based seminar hosted by Licensor which discusses changes and new features of said Update; and

3) Licensor will be available by telephone to answer a reasonable number of questions from the Licensee's installer regarding the installation.

At Licensee's request, Licensor will be available to provide additional installation, configuration or other services at its then published rates.

4. **Cooperation of Licensee**. Licensee agrees to notify Licensor promptly following the discovery of any Error. Further, upon discovery of an Error, the Licensee agrees, if requested by Licensor, to submit to Licensor a listing of output and any other data that Licensor may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.

5. **Exceptions**. The following matters are not included as support services under this Agreement:

5.1. Any problem resulting from the misuse, improper use, alteration, or damage of the Software (not caused by Licensor);

5.2. Any problem caused by modifications in any version of the Software not made or authorized by Licensor; and any problem resulting from programming other than the Software; and any problem caused by equipment or hardware not caused by the Software;

5.3. Any problem resulting from the combination of the Software with such other programming or equipment to the extent such combination has not been approved by Licensor; or

5.4. Errors or Software functionality in any version of the Software other than the most recent release (including any Update or Upgrade), provided that Licensor will continue to support superseded releases for sixty (60) days regarding Errors, and for nine (9) months regarding Software functionality.

5.5 If Licensee requests help and/or support from Licensor, Licensee will be responsible to pay Licensor's normal charges and expenses for time or other resources provided by Licensor to diagnose or attempt to correct any problem set forth in items 5.1, 5.2, 5.3 and/or 5.4 above.. In addition, the Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to maintain an internet connection. Licensor will not be responsible for delays caused by events or circumstances beyond its reasonable control.

6. **Fees and Expenses.** Maintenance fees and payment terms shall be as set forth in Attachment 1, Table 2 of this Contract.

7. **Use and Restrictions.** Licensee shall be entitled to use any Updates provided to Licensee under section 3.3 above, solely for the same purposes and restrictions (including User Limits) for the applicable Modules as set forth in the Licensee's license of the Software under the License Agreement. Licensee agrees to return or destroy, as requested by Licensor, superseded copies of the Software when replaced by Updates.

8. **Intellectual Property Rights.** Licensor shall retain all proprietary and ownership rights in and to the Software and any Updates (subject to the license granted under the License Agreement) and any of its general know-how, methodology, tools and/or ideas that Licensor may utilize or create in order to render its support hereunder. The Licensee may resort solely to the indemnification rights provided by Licensor contained in the License Agreement in the event of any third-party claim of intellectual property infringement arising from Licensee's use of the most recent Update.

9. **Limited Warranty.** Licensor warrants that each Update will perform in all material respects the functions described in its accompanying Documentation for a period of thirty (30) days from the date of its delivery. Licensor shall perform its services hereunder in a professional manner in accordance with generally accepted industry standards. Licensee shall report any breach during the warranty period, and Licensor's sole obligation for such breach shall be to address the Error that caused said breach and correct or provide a workaround for such reproducible Error as provided in Exhibit B. Licensor shall be entitled to correct a breach of this warranty by providing Licensee with a further Update that corrects such breach. Licensor's correction of such Errors and/or breach of this limited program warranty shall be in satisfaction of any liability to Licensee

hereunder. Other than as specifically set forth in the Documentation, Licensor does not warrant that an Update will meet Licensee's requirements, that an Update will operate in the combinations which Licensee may select for use, that the operation of an Update will be uninterrupted or error-free, or that all non-material Software errors will be corrected. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR SHALL HAVE NO OTHER LIABILITY FOR THE UPDATES OR ANY SERVICES PROVIDED. LICENSOR MAKES AND LICENSEE RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY; AND LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **Limitation of Liability; Exclusion of Consequential Damages.** The cumulative liability of Licensor to Licensee for all claims relating to any support or software provided and any services rendered under this Maintenance Agreement, in contract, tort, or otherwise, shall not exceed the total amount of all maintenance fees paid to Licensor within the prior year (other than for indemnification obligations provided in this Agreement). In no event shall either party be liable to the other for any consequential, indirect, special, or incidental damages, even if such party has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

11. **Default.**

11.1 Should the Licensee fail to pay any fees or charges due hereunder, Licensor may, at its option, in addition to other available remedies, terminate this Agreement or suspend maintenance services, provided that it first gives Licensee fifteen (30) days' prior notice in order to permit Licensee to cure its default.

11.2 Licensee shall have the right to terminate the whole or any part or this Agreement forthwith in the event that the Licensor is in material breach of its obligations under this Agreement and such breach is not remedied within thirty (60) days of a written request so to do (or a reasonable period of time to cure such breach, if such breach cannot be reasonably be remedied within 60 days and Licensor has commenced to cure said breach within said 60 day period). Such termination by Licensee will not terminate the license granted to Licensee under the License Agreement to use the Software.

11.3 Upon termination of this Agreement and/or the License Agreement for any reason, Licensor shall at Licensee’s request cease using all Licensee’s content, information and materials and return the same to Licensee forthwith;

12. **Miscellaneous.**

12.1 The Updates as provided by Licensor shall not contain any virus, any worm, or any backdoor or other device that would permit unauthorized access to the Updates or to any of Licensee's other software or systems. If such a device is found to exist, Licensor shall remove or correct the problem from the Licensor's Updates on a priority basis. Licensee shall be responsible for providing and maintaining current back ups and industry standard, updated, virus protection for its systems and data. Licensor shall not be responsible for any loss or damage to Licensee to the extent any such loss or damage results from Licensee’s failure to provide and maintain current back ups and industry standard, updated, virus protection for its own systems and data..

12.2 Licensee shall not create or attempt to create, or permit others to create or attempt to create, by disassembling, reverse engineering or otherwise, the source programs or any part thereof from the object program or from other information (whether oral, written, tangible or intangible) made available to Licensee under this Agreement.

12.3 Licensee shall notify Licensor promptly if it obtains information as to any unauthorized possession, use or disclosure of any item of Software by any person or entity. Licensee agrees to use reasonable actions to cooperate with Licensor at Licensor’s expense, in protecting Licensor’s proprietary rights.

12.4 Each party to this Agreement is an independent contractor and as such shall have no authority to bind or commit the other.

12.5 All notices shall be in writing and shall be deemed to be delivered when sent by registered mail, postage prepaid, return receipt requested, faxed, e-mailed (for contract change notices) or when sent by overnight courier. All notices shall be directed to Licensor or to Licensee, its successors or assigns, at the respective addresses set forth on the title page of this Agreement or to such other address as one party may, from time to time, designate by notice to the other party.

12.6 If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

12.7 This Agreement may be assigned, or transferred by the Licensor to any subsidiary, holding company or affiliate of Licensor, without the consent of the Licensee, provided that Licensor shall be relieved of its obligations under this Agreement. The State shall be provided with the name and address of the subsidiary, holding company or affiliate of that party prior to assignment or transfer, and may terminate the agreement it is discovered that the subsidiary, holding company or affiliate is debarred from contracting with the State of Michigan. Further, the Licensor shall be entitled to assign or transfer its rights and obligations under this Agreement to any entity, without the Licensee's consent, in connection with a sale of all or substantially all of Licensor's assets to that entity. The Licensee may assign, sublicense or transfer its rights under this Maintenance Agreement to any entity(ies) that is(are) authorized assigness of the license of the Software pursuant to the License Agreement. No assignment, sublicense or transfer of rights by Licensee hereunder shall of itself expand the license granted under the relevant License agreement (including increasing the Concurrent User Limit).

12.8 This Agreement and any related modification or amendments may be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

12.9 This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement may only be modified by written instrument signed by both parties. The undersigned each represent and warrant that they have full power and authority to enter into this Agreement on behalf of the relevant corporations.

13. CONFIDENTIALITY

13.1 Each party shall maintain and not disclose the other party's confidential proprietary information. The Licensee shall maintain as "Confidential Material" all information regarding the Software and Documentation (including its operation, functions, and look and feel). The Licensor shall maintain as "Confidential Material" all Licensee's proprietary information, including Licensee's business information, which Licensee may disclose to Licensor in connection with the installation, maintenance and operation of the Software. Neither party shall disclose to any third party other than parties who have a need to know (e.g. attorneys and accountants) the terms and conditions of this Agreement (including license fees and other terms) without the consent of the other party. However, each party shall not be restricted from publicly disclosing that they have entered into a maintenance agreement with the other for the Software. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information that is publicly available pursuant to the Michigan FOIA.

13.2. Each party shall take precautions to keep the Confidential Material confidential of at least the same degree of care that it takes to protect its own confidential materials. Each party agrees that it will not disclose the confidential material to a third party except that each party may disclose the Confidential Material to such limited group of its authorized subcontractors, agents and advisors on a "need to know" basis, provided that such persons are informed of the confidential nature of such materials.

13.3. Each party acknowledges that the use or disclosure of the Confidential Material in a manner inconsistent with the terms herein may cause the other irreparable damage, and such other party, shall have the right to seek equitable and injunctive relief to prevent such unauthorized use or disclosure, in addition to any other remedies which may be available to it at law or in equity.

13.4. Notwithstanding anything to the contrary contained herein, the restrictions set forth above regarding Confidential Material shall not apply to any material (a) which is publicly available at the time of disclosure or which becomes publicly available thereafter other than by breach of this Agreement; (b) which is already known to the disclosee prior to disclosure; (c) which is rightfully received by the disclosee from a third party without similar restrictions on disclosure imposed by such party; or (d) which has been or is developed by the disclosee independently of any such information disclosed by the discloser and through no wrongful act of the disclosee. Further, neither party shall be restricted from disclosing Confidential Material pursuant to a subpoena or governmental order, provided that any such disclosure shall be made only to the extent ordered, and provided further that in such circumstances the discloser (i) shall promptly notify the other party so that it may intervene in response to such subpoena or order, or (ii) if prompt notice cannot be given, shall seek to obtain a protective order from the court or governmental body having jurisdiction over the matter with respect to which such subpoena or order was issued.

13.5 The provisions of this section on Confidentiality shall survive the termination of this Agreement.

EXHIBIT A
ERROR RESPONSE, WORKAROUND and CORRECTION TIMES

Priority Level	**Description**	**Initial Response Time**	**Resolution**
Severity 1	Software fails to operate or produces an incorrect date or financial calculation.	2 hours during telephone hot line hours	Licensor shall immediately assign a senior level programmer to work continuously, during extended business hours, on a workaround or correction for the problem.
Severity 2	Software functionality is severely impaired, having a critical impact on customer's business operations.	4 hours during telephone hot line hours	Licensor shall immediately assign a senior level programmer to work continuously, during extended business hours, on a workaround or correction for the problem.
Severity 3	Software operates with impaired functionality or causes degraded performance without having a critical impact on customer's business operations.	8 hours during telephone hot line hours	Licensor shall provide a work around or correction within 20 business days.
Severity 4	Software defect causes minor but material inconvenience, or error in documentation.	1 business day	Correction shall be included in next Update or Upgrade, unless such Upgrade or Update has already been scheduled for release in next 20 business days, in which case the correction shall be included in the subsequent Update or Upgrade.
Severity 5	All other Software defects.		Correction to be at Licensor's discretion.

Extended business days shall mean 12 hours per day, including normal business hours.

Attachment 3
Software License Agreement

End-User License Agreement

Order Number: 07-264	License Date: September 13, 2007
Licensee: The State of Michigan Department of Transportation State Transportation Building 425 W. Ottawa St. P.O. Box 30050 Lansing, MI 48909	Licensor: Ecteon, Inc 1697 Broadway Suite 906 New York, NY 10019

Product Description - Modules	Concurrent User Limit
Contraxx Site 500 License - any Contraxx Module	500
Contraxx Viewer	Unlimited

Licensee Signature	Date	Licensor Signature	Date
Print name	Title	Print name	Title

YOUR SIGNATURE ACKNOWLEDGES THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT.

CONTRAXX SOFTWARE END-USER LICENSING AGREEMENT

This is an Agreement between Licensor and Licensee, in which the Licensor grants certain rights in "Contraxx" computer software and accompanying documentation developed by Licensor to store, maintain, and access contract and related information, as provided herein.

1. DEFINITIONS

1.1 "Software" means the licensed Modules ("Module") of the "Contraxx" suite of computer programs and Documentation, including any updates provided to Licensee from time to time.. The Modules are the Contraxx Administrator, the Contraxx Manager, the Contraxx Field and the Contraxx Viewer.

1.2 The "User Limit" means the number of persons licensed for use of a licensed Module on a multi-user computer system or network.

1.3 "Documentation" means the documentation for the Software available on an FTP website provided by the Licensor.

1.4 "Error" means any failure of the Software to conform in any material respect to the Documentation.

2. LICENSING OF SOFTWARE

2.1 Subject to the terms of this agreement, Licensor hereby grants Licensee a non-exclusive non-transferable perpetual license to copy, install and use the licensed Modules of the Software on a single computer system owned or controlled by Licensee, for the applicable User Limits set forth on the Sales Order (and as may be increased from time to time pursuant to Section 2.2) solely for Licensee's internal information management and internal data processing purposes.

2.2 All copyright and proprietary rights in and to the Software shall remain the exclusive property of Licensor subject to the rights granted to Licensee herein. Licensor hereby reserves all rights in the Software not specifically granted by this license Agreement.

2.3 Source code or other information pertaining to the logic design of the Software is specifically excluded from the license granted hereunder.

3 INFRINGEMENT INDEMNITY

Licensor represents as of the date hereof that Licensor has received no notice of any suits, proceedings, actions, or claims which claim or allege that the Software infringes a copyright, patent, trade secret right or other intellectual property right of a third party, nor is any such action pending, nor to the best of Licensor's knowledge, is any such action threatened.

Licensor shall defend and indemnify Licensee against any and all costs, liabilities, damages and expenses finally awarded against Licensee by a court of competent jurisdiction (including settlement) arising out of a claim by a third party that the Software infringes a copyright, patent or other intellectual property rights under the laws of the United States, provided that: (a) Licensee notifies Licensor in writing within thirty (30) days of the Licensee 's initial learning of a potential claim (but failure to do so shall not relieve Licensor of its obligations under this Section unless Licensor's ability to perform such obligations is prejudiced by such failure); (b) Licensor has sole control of the defense of such claim and all related settlement negotiations; and (c) Licensee provides Licensor, at Licensor's reasonable expense, with the assistance, information and authority necessary to perform Licensor 's obligations under this Section. Notwithstanding the foregoing, Licensor shall have no liability for any claim of infringement to the extent such claim is based on (i) use of a superseded or altered release of Software if the infringement would have been avoided by the use of a current unaltered release of the Software, which Licensor provided to Licensee, (ii) use of the Software in combination with any other software, hardware or data where in the absence of such combination the Software would not have been infringing; or (iii) any data, design, business process, content, or custom configuration supplied or specified by Licensee. In the event the Software is held or believed by Licensor to infringe any third party intellectual property or any other proprietary rights, Licensor shall have the option, at its expense, and in satisfaction of any liability under this Agreement other than its indemnification obligations under this section to:

(i) modify the Software to be non-infringing provided that Licensor maintains the overall functionality of the Software; or

(ii) obtain for Licensee the relevant license to continue using the Software; or

(iii) Licensor may terminate this Agreement with respect to the infringing Software and refund the sum of $465,000.00, such amount to be reduced by Twenty-Five Percent (25%) for each year of Licensee's use thereof

4.0 WARRANTIES

4.1 LIMITED PROGRAM WARRANTY. Licensor warrants for a period of one (1) year from the date hereof, that the unmodified version of the Software will not contain Errors and will perform in all material respects the functions described in the Documentation. Licensee shall report any breach during the warranty period, and Licensee's exclusive remedy and Licensor's sole obligation for such breach shall be to correct or provide a workaround for such reproducible Errors. Licensor shall be entitled to correct a breach of this warranty by providing Licensee with an Update that corrects such breach. Licensor's correction of such Errors and/or breach of this limited program warranty shall be in satisfaction of any liability to Licensee hereunder. If Licensor is unable to correct such breach within 60 days, Licensee's sole remedy shall be to terminate the Agreement pursuant to Paragraph 5.1.

4.2 DISCLAIMERS. Other than as specifically set forth herein, Licensor does not warrant that the Software will meet Licensee's requirements, that the Software will operate in the combinations which Licensee may select for use, that the operation of the Software will be uninterrupted or error-free, or that all non-material Software errors will be corrected.

4.3 THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER STATUTORY OR COMMON-LAW WARRANTY. LICENSOR ON ITS OWN BEHALF HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES. THE LIABILITY OF EACH PARTY TO THE OTHER PARTY, IF ANY, FOR BREACH OF WARRANTY, OR ANY CLAIM RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE SUM OF $465,000.00.. NOTWITHSTANDING THE FOREGOING, THIS SECTION 4.3 SHALL NOT APPLY TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR ANY BREACH OF CONFIDENTIALITY IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF BUSINESS OR PROFITS, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER. The provisions of this Agreement allocate the risks between Licensor and Licensee. Licensor's pricing reflects this allocation of risk and the limitation of liability specified herein.

5. TERMINATION

5.1 If Licensor is in breach of the warranty under Paragraph 4.1 of this Agreement during the relevant warranty period, and Licensor fails to remedy said breach as provided therein, then Licensee shall give written notice of said breach to Licensor, and if Licensor fails to remedy said breach within 60 days after receipt of said written notice, Licensee shall be entitled to terminate this Agreement by written notice from Licensee to Licensor and receive a refund in the amount of $465,000.00.

5.2. Upon any termination of this Agreement, Licensee shall immediately discontinue use of the Software, shall purge the Software from its computer systems, storage media and other files, and shall destroy or return to Licensor the Software and all copies thereof. Upon request, Licensee shall certify in writing that Licensee has complied with the provisions of this section 5.2.

6. Miscellaneous

6.1 The Software as provided by Licensor shall not contain any device that is intended or designed to impair operation of the Software (other than as set forth above) or any virus, any worm, or any backdoor or other device that would permit unauthorized access to the Software or to any of Licensee's other software or systems. If such a device is found to exist, Licensor, in satisfaction of its liability hereunder, shall remove or correct the problem from the Licensor's Software on a priority basis. Licensee shall be responsible for providing and maintaining current back ups and industry standard, updated, virus protection for its systems and data. In no event, shall Licensor be liable for loss of Licensee's data or other damage to Licensee's property to the extent any such loss or damage results from Licensee's failure to provide and maintain current back ups and industry standard, updated, virus protection for its own systems and data. Licensee acknowledges that the Software may have included logic or computer code designed to restrict usage of the Software to that permitted under this Agreement. Licensee shall not take any action designed to circumvent any such protection scheme.

6.2 The terms and conditions for support and maintenance of the Software, including the furnishing of any updates to the Software, shall be set forth in a separate agreement.

6.3 Licensee shall not create or attempt to create, or permit others to create or attempt to create, by disassembling, reverse engineering or otherwise, the source programs or any part thereof from the object program or from other information (whether oral, written, tangible or intangible) made available to Licensee under this agreement.

6.4 Licensee shall notify Licensor promptly if it obtains information as to any unauthorized possession, use or disclosure of any item of Software by any person or entity. Licensee agrees to use reasonable actions to cooperate with Licensor at Licensor's expense, in protecting Licensor's proprietary rights.

6.5 Partial Invalidity. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

6.6 This Agreement shall not be assigned, sub-licensed or in any other manner transferred to any other person or entity by either party without the prior written consent of the other. Notwithstanding the above, this Agreement may be assigned, or transferred by either party to any subsidiary, holding company or affiliate of that party, without the consent of the other party, provided that neither party shall be relieved of its obligations under this Agreement. The State shall be provided with the name and address of the subsidiary, holding company or affiliate of that party prior to assignment or transfer, and may terminate the agreement it is discovered that the subsidiary, holding company or affiliate is debarred from contracting with the State of Michigan. Further, each party shall be entitled to assign or transfer its rights and obligations under this Agreement to any entity, without the other party's consent, in connection with a sale of all or substantially all of said party's assets to that entity. No assignment, sub-license or transfer shall increase the scope or extent of any license granted hereunder.

6.7 This Agreement and any related modification or amendments may be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

6.8 This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement may only be modified by written instrument signed by both parties. The undersigned each represent and warrant that they have full power and authority to enter into this Agreement on behalf of the relevant corporations Notwithstanding the above, this agreement shall not supersede any existing confidentiality or nondisclosure agreement between the parties.

6.9 Each party to this Agreement is an independent contractor and as such shall have no authority to bind or commit the other.

6.10 All notices shall be in writing and shall be deemed to be delivered when sent by registered mail, postage prepaid, return receipt requested, faxed, e-mailed (for contract change notices) or when sent by overnight courier. All notices shall be directed to Licensor or to Licensee, its successors or assigns, at the respective addresses set forth on the title page of this Agreement or to such other address as one party may, from time to time, designate by notice to the other party.

6.11 Each party shall not disclose to any third party other than parties who have a need to know (i.e. consultants, creditors, shareholders, auditors, accountants, and attorneys) the terms and conditions of this License (including license fees and other terms) without the prior written consent of the other party in each instance. However, each party shall not be restricted from publicly disclosing that they have entered into a licensing agreement with the other for the Software. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information that is publicly available pursuant to the Michigan FOIA.

6.12 Licensor shall be entitled to, and Licensee hereby grants Licensor a non-exclusive worldwide license to list, advertise, and/or publish the name of the Licensee (including any trademark or trade name approved by Licensee) as a client of the Licensor and user of the Software, including publishing said name and trademark on Licensor's web-site(s) and trade literature, for the purposes of promoting Licensor's business. Licensor shall use the Licensee's trademarks consistent with any use standards provided by Licensee.

7. CONFIDENTIALITY

7.1 Each party shall maintain and not disclose the other party's confidential proprietary information. The Licensee shall maintain as "Confidential Material" all information regarding the Software and Documentation (including its operation, functions, and look and feel). The Licensor shall maintain as "Confidential Material" all Licensees' proprietary information, including Licensee's business information, which Licensee may disclose to Licensor in connection with the installation and operation of the Software.

7.2. Each party shall take precautions to keep the Confidential Material confidential of at least the same degree of care that it takes to protect its own confidential materials. Each party agrees that it will not disclose the confidential material to a third party except that each party may disclose the Confidential Material to such limited group of its authorized subcontractors, agents and advisors on a "need to know" basis, provided that such persons are informed of the confidential nature of such materials and agree to maintain such confidentiality under the terms of this agreement.

7.3. Each party acknowledges that the use or disclosure of the Confidential Material in a manner inconsistent with the terms herein may cause the other irreparable damage, and such other party shall have the right to seek equitable and injunctive relief to prevent such unauthorized use or disclosure, in addition to any other remedies which may be available to it at law or in equity.

7.4. Notwithstanding anything to the contrary contained herein, the restrictions set forth above regarding Confidential Material shall not apply to any material (a) which is publicly available at the time of disclosure or which becomes publicly available thereafter other than by breach of this Agreement; (b) which is already known to the disclosee prior to disclosure; (c) which is rightfully received by the disclosee from a third party without similar restrictions on disclosure imposed by such party; or (d) which has been or is developed by the disclosee independently of any such information disclosed by the discloser and through no wrongful act of the disclosee. Further, neither party shall be restricted from disclosing Confidential Material pursuant to a subpoena or governmental order, provided that any such disclosure shall be made only to the extent ordered, and provided further that in such circumstances the discloser (i) shall promptly notify the other party so that it may intervene in response to such subpoena or order, or (ii) if prompt notice cannot be given, shall seek to obtain a protective order from the court or governmental body having jurisdiction over the matter with respect to which such subpoena or order was issued.

7.5 The provisions of this section on Confidentiality shall survive the termination of this Agreement.

Agreed to and accepted:

For Licensee:	For Licensor:
SIGNED BY AUTHORIZED PARTY	SIGNED BY AUTHORIZED PARTY
By:	By:

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 CONTRACT TERM
This Contract is for a period of 5 years beginning November 1, 2011 through October 31, 2016. All outstanding Purchase Orders must also expire upon the termination 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, shall remain in effect for the balance of the fiscal year for which they were issued.

2.002 OPTIONS TO RENEW
This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 5 additional 1 year periods.

2.003 LEGAL EFFECT
Contractor accepts this Contract by signing two copies of the Contract and returning them to the Purchasing Operations. The Contractor shall 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 shall not be liable for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract or Change Order has been approved by the State Administrative Board (if required), signed by all the parties and a Purchase Order against the Contract has been issued.

2.004 ATTACHMENTS, APPENDICIES & EXHIBITS
All Attachments, Appendices and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 ORDERING
The State must issue an approved written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are specifically contained in that Purchase Order or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor will be required to 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
The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005.**

In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work shall 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. The Contract may be modified or amended only by a formal Contract amendment.

The State of Michigan has licensed the Contraxx Software from the bidder pursuant to the "Contraxx Software End-User Licensing Agreement" dated September 13, 2007 (the "License"). This agreement shall have no effect on the terms and conditions of said License, which is hereby ratified and confirmed in its entirety.

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 State agency and if the Deliverable/Service does not the meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 REFORMATION AND SEVERABILITY
Each provision of the Contract is severable from all other provisions of the Contract and, if one 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
This Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations and the Michigan State Police (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The Purchasing Operations Contract Administrator for this Contract is:

Steve Motz, Buyer
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
motzs@michigan.gov
517-241-3215

2.022 CONTRACT COMPLIANCE INSPECTOR
The Director of Purchasing Operations directs the person named below, or his or her designee, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. **Monitoring Contract activities does not imply the authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract. Purchasing Operations is the only State office**

authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract. The Contract Compliance Inspector for this Contract is:

Sandi Thorne
DTMB Financial Services/Procurement
2nd Floor Lewis Cass Building
320 S. Walnut
Lansing, MI 48933
Ph: 517-335-4070
thornes@michigan.gov

2.023 TECHNICAL MANAGER
The following individual will oversee the contract:

Simon Wang
Department of Technology, Management and Budget
Email: wangs@michigan.gov
Phone: 517-335-5292

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, Contractor shall provide a detailed outline of all work to be done, including tasks necessary to accomplish the Additional Services/Deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly before commencing performance of the requested activities it believes are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be in-scope Services/Deliverables and not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such Services or providing such Deliverables, the Contractor shall notify the State in writing that it considers the Services or Deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that Service or providing that Deliverable. If the Contractor does so notify the State, then such a Service or Deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(1) Change Request at State Request
If the State requires Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(2) Contractor Recommendation for Change Requests:
Contractor shall be entitled to propose a Change to the State, on its own initiative, should Contractor believe the proposed Change would benefit the Contract.

(3) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal shall include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(4) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(5) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Purchasing Operations.

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

State:

State of Michigan
Purchasing Operations
Attention: Steve Motz
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:
See Contractor Contact Information Provided on Cover Page of Contract.

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 giving 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 shall be deemed to be an employee, agent or servant of the State for any reason. Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 COVENANT OF GOOD FAITH
Each party shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties shall 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
Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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

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

Notwithstanding anything to the contrary herein, this agreement may be assigned, or transferred by the Contractor to any subsidiary, holding company or affiliate of the Contractor, without the consent of Michigan, provided that neither party shall be relieved of its obligations under this Agreement. Further, Contractor shall be entitled to assign or transfer its rights and obligations under this Agreement to any entity, without Michigan's consent, in connection with a sale of all or substantially all of Contractor's assets or equity to that entity.

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 shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

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

2.033 PERMITS
Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall 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 this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 FREEDOM OF INFORMATION
All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 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 this Contract shall 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 this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. 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 shall show verification of measurable progress at the time of requesting progress payments.

2.042 ADJUSTMENTS FOR REDUCTIONS IN SCOPE OF SERVICES/DELIVERABLES
If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 SERVICES/DELIVERABLES COVERED
The State shall not be obligated to pay any amounts in addition to the charges specified in this Contract for all Services/Deliverables to be provided by Contractor and its Subcontractors, if any, under this Contract,.

2.044 INVOICING AND PAYMENT – IN GENERAL
(a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
(b) Each Contractor invoice shall 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 shall 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 1.600**.
(c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department

of Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) shall mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government 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.

2.045 PRO-RATION
To the extent there are Services that are to be paid for on a monthly basis, the cost of such Services shall 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 this 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 shall it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 ELECTRONIC PAYMENT REQUIREMENT
Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at http://www.cpexpress.state.mi.us. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment shall be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 EMPLOYMENT TAXES
Contractor shall collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 SALES AND USE TAXES
Contractor shall register and 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 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 this 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 this 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 this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 CONTRACTOR KEY PERSONNEL

(a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State shall have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor shall notify the State of the proposed assignment, shall introduce the individual to the appropriate State representatives, and shall provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State shall provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 RE-ASSIGNMENT OF PERSONNEL AT THE STATE'S REQUEST

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

2.064 CONTRACTOR PERSONNEL LOCATION
All staff assigned by Contractor to work on the Contract shall perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel shall, 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 agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor shall 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 this Contract and shall 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 agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 CONTRACT MANAGEMENT RESPONSIBILITIES
Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services. Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties shall include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with the Project Plan is likely to delay the timely achievement of any Contract tasks.

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

2.068 CONTRACTOR RETURN OF STATE EQUIPMENT/RESOURCES
The Contractor shall 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.

2.070 Subcontracting by Contractor

2.071 CONTRACTOR FULL RESPONSIBILITY
Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State shall consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 STATE CONSENT TO DELEGATION
Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Technology, Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to

replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State shall agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work shall 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 shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor shall be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State shall not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. A list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract is attached.

2.074 FLOW DOWN

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

2.075 COMPETITIVE SELECTION

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

2.080 State Responsibilities

2.081 EQUIPMENT

The State shall provide only the equipment and resources identified in the Statement 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 shall 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 agrees that it shall 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 shall be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations shall include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks shall be initiated by the State and shall be reasonably related to the type of work requested.

All Contractor personnel shall also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dit. Furthermore, Contractor personnel shall be expected to agree to the State's security and acceptable use policies before the Contractor personnel shall be accepted as a resource to perform work for the State. It is expected the Contractor shall present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff shall be expected to 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 shall 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 REQUIREMENTS

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law.

Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure.

The Contractor shall contact the Department of Technology, Management and Budget, Financial Services immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, shall be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.
Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor shall continue to treat cardholder data as confidential upon contract termination.

The Contractor shall provide the Department of Technology, Management and Budget, Financial Services documentation showing PCI Data Security certification has been achieved. The Contractor shall advise the Department of Technology, Management and Budget, Financial Services of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor shall provide a time line for corrective action.

2.100 Confidentiality

2.101 CONFIDENTIALITY

Contractor and the State each acknowledge that the other possesses and shall 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 this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 PROTECTION AND DESTRUCTION OF CONFIDENTIAL INFORMATION

The State and Contractor shall 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 shall (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party shall limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) 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 in this Section shall 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 this Section shall 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 this Contract for any reason.

2.110 Records and Inspections

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

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

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

2.114 AUDIT RESOLUTION
If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor shall 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 shall 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
If the audit demonstrates any errors in the documents provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount shall 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.

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

2.120 Warranties

2.121 WARRANTIES AND REPRESENTATIONS
The Contractor represents and warrants:
(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.

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

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under neither this Contract, nor their use by the State shall infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, 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 this 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 days of learning about it.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

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

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

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

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

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

2.125 EQUIPMENT WARRANTY - RESERVED

2.126 EQUIPMENT TO BE NEW - RESERVED

2.127 PROHIBITED PRODUCTS - RESERVED

2.128 CONSEQUENCES FOR BREACH - RESERVED

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 that may arise out of or result from the Contractor's performance of services under the terms of this 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 this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is 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 this 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 this Contract must be issued by companies that have been approved to do business in the State.
See www.michigan.gov/dleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State 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 this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor‘s business for bodily injury and property damage as required by law.

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

☑ 3. Workers’ compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor’s domicile. If a self-insurer provides the applicable coverage, 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 one million dollars ($1,000,000.00) with a maximum deductible of fifty thousand dollars ($50,000.00).

☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars ($10,000,000.00), which 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: three million dollars ($3,000,000.00) each occurrence and three million dollars ($3,000,000.00) annual aggregate.

☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this 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 this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 CERTIFICATES OF INSURANCE AND OTHER REQUIREMENTS
Contractor must furnish to MDTMB Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract Number or the Purchase Order Number 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 coverage afforded under the policies SHALL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Technology, Management and Budget. 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 insured 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 years following the expiration or termination for any reason of this 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 this 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 this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

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

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

2.143 EMPLOYEE INDEMNIFICATION
In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

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

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

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

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

2.146 INDEMNIFICATION PROCEDURES
The procedures set forth below must apply to all indemnity obligations under this Contract.

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

Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

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

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

2.150 Termination/Cancellation

2.151 NOTICE AND RIGHT TO CURE

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

2.152 TERMINATION FOR CAUSE

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

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

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

(d) If the State terminates this 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 this Contract for a termination for convenience.

2.153 TERMINATION FOR CONVENIENCE

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

2.154 TERMINATION FOR NON-APPROPRIATION

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State 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 change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract shall be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this 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 shall 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 this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 TERMINATION FOR APPROVALS RESCINDED

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

(b) If the State terminates this 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 this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 RESERVATION OF RIGHTS

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

2.160 Termination by Contractor

2.161 TERMINATION BY CONTRACTOR

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 CONTRACTOR TRANSITION RESPONSIBILITIES

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor shall 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 this 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 180 days. These efforts must include, but are not limited to, those listed in **Section 2.150.**

2.172 CONTRACTOR PERSONNEL TRANSITION
The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor 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 this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

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

2.174 CONTRACTOR SOFTWARE TRANSITION
The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses 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, the termination provisions of this Contract must govern reimbursement. 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 will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 STATE TRANSITION RESPONSIBILITIES
In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to reconcile all accounts between the State and the Contractor, complete any pending post-project reviews and perform any others obligations 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**. 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 2.182**.

2.182 CANCELLATION OR EXPIRATION OF STOP WORK ORDER
The Contractor shall resume work if the State cancels a Stop Work Order or if it expires. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall

be modified, in writing, accordingly, if: (a) the Stop Work Order results in an increase in the time required for, or in 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 will 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 shall be deemed to be a termination for convenience under **Section 2.153**, and the State shall pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this Section**.**

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 shall be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any dispute after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DTMB, or designee, to resolve the dispute without the need for formal legal proceedings, as follows:

(1) 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 at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(2) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.

(3) The specific format for the discussions shall 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.

(4) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, shall 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 shall 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 shall 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 shall 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 that the damages to the party resulting from the breach shall be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

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

2.200 Federal and State Contract Requirements

2.201 NONDISCRIMINATION
In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, and marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required 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 shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled 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, shall 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 shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

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

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the Contract. Contractor shall also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the agency responsible for enforcement of the wage rates and fringe benefits. Contractor shall

keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

2.210 Governing Law

2.211 GOVERNING LAW
The Contract shall 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 shall 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 shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to 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 shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or $500,000 which ever 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; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

2.230 Disclosure Responsibilities

2.231 DISCLOSURE OF LITIGATION
Contractor shall 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) shall 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 shall 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 that 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 shall be deemed to satisfy the requirements of this Section.

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

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

(b) 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 this 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:

(1) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(2) 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 shall make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify MDTMB Purchasing Operations.

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

(3) Contractor shall also notify MDTMB Purchase Operations within 30 days whenever changes to company affiliations occur.

2.232 CALL CENTER DISCLOSURE

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

2.233 BANKRUPTCY

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish 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 this 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 shall 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 shall 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,** Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and

successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and 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 AGREEMENT (SLA)

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

(1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.

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

(3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

(i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.

(ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

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

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

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 LIQUIDATED DAMAGES

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

Unauthorized Removal of any Key Personnel

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

2.244 EXCUSABLE FAILURE

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of 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 OF DELIVERABLES

The Contractor shall provide deliverables as required in Article 1.

2.252 CONTRACTOR SYSTEM TESTING
The Contractor shall conduct system testing as required in Article 1.

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

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

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

The State will approve in writing a Deliverable upon confirming that it conforms to and, in the case of a Custom Software Deliverable, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable that contains material deficiencies if the State elects to permit 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 that remain outstanding at the time of State approval.

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

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

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

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

2.255 PROCESS FOR APPROVAL OF CUSTOM SOFTWARE DELIVERABLES - RESERVED

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

2.260 Ownership

2.261 OWNERSHIP OF WORK PRODUCT BY STATE
The State owns all Deliverables, as they are work made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

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

Notwithstanding the provisions of Sections 2.261 and 2.262:

(a) Contractor shall retain all proprietary and ownership rights in and to the Contraxx software including any functions and/or features which are incorporated into the generalized Contraxx software as upgrades or updates (subject to the license granted under the License Agreement) and any of Contractor's general know-how, methodology, tools or ideas that Contractor may utilize or create in rendering its services or providing any Deliverable hereunder and/or any general know-how , processes, methodology, or ideas that are not specific to Michigan's particular requirements.

(a) Michigan acknowledges that, to the extent that the same or similar data will be captured and processed for similar purposes by other entities who license and use the Software, Contractor may independently set up templates for others that provide similar or identical functionality to the Deliverables. Nothing herein shall prevent the Contractor from independently developing and using templates and other software with similar or identical functionality for other customers.

(a) To the extent that Michigan suggests to Contractor any proprietary idea relating to the generalized Software or generalized aspects or features of contract management software, other than ideas which directly relate to the services or specific templates rendered herein, then such idea shall not be considered Confidential Material of Michigan. Under said circumstances, Contractor shall have the right to use such idea to modify the Software or otherwise, and in such event Michigan shall have no additional rights to any software as a result of Contractor's incorporation of said idea.

2.263 RIGHTS IN DATA

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 will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, 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.

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

2.264 OWNERSHIP OF MATERIALS

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

2.270 State Standards

2.271 EXISTING TECHNOLOGY STANDARDS

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

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 Technical Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access and configuration management procedures.

2.280 Extended Purchasing

2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY) - RESERVED

2.282 STATE EMPLOYEE PURCHASES - RESERVED

2.290 Environmental Provision

2.291 ENVIRONMENTAL PROVISION

Energy Efficiency Purchasing Policy: The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy: The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclables; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

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

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

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

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

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing,

transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning: The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

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

2.300 Deliverables

2.301 SOFTWARE
A list of the items of software the State is required to purchase for executing the Contract is attached in Article 1. The list includes all software required to complete the Contract and make the Deliverables operable; if any additional software is required in order for the Deliverables to meet the requirements of this Contract, such software shall be provided to the State by Contractor at no additional charge (except where agreed upon and specified in a Statement of Work or Contract Change Notice). The attachment also identifies certain items of software to be provided by the State.

2.302 HARDWARE - RESERVED

2.310 Software Warranties

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

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

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

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

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

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

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

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

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

2.320 Software Licensing

2.321 CROSS-LICENSE, DELIVERABLES ONLY, LICENSE TO CONTRACTOR - RESERVED

2.322 CROSS-LICENSE, DELIVERABLES AND DERIVATIVE WORK, LICENSE TO CONTRACTOR - RESERVED

2.323 LICENSE BACK TO THE STATE - RESERVED

2.324 LICENSE RETAINED BY CONTRACTOR
Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable, transferable license to use the Software and related documentation according to the terms and conditions of this Contract. For the purposes of this license, "site-wide" includes any State of Michigan office regardless of its physical location.

The State may modify the Software and may combine such with other programs or materials to form a derivative work. The State will own and hold all copyright, trademarks, patent and other intellectual property rights in any derivative work, excluding any rights or interest in Software other than those granted in this Contract.

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

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

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

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

2.330 Source Code Escrow

2.331 DEFINITION
"Source Code Escrow Package" shall mean:
(a) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
(b) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
(c) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

2.332 DELIVERY OF SOURCE CODE INTO ESCROW
Contractor shall deliver a Source Code Escrow Package to the Escrow Agent, pursuant to the Escrow Contract, which shall be entered into on commercially reasonable terms subject to the provisions of this Contract within (30) thirty days of the execution of this Contract.

2.333 DELIVERY OF NEW SOURCE CODE INTO ESCROW
If at any time during the term of this Contract, the Contractor provides a maintenance release or upgrade version of the Licensed Software, Contractor shall within ten (10) days deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and provide the State with notice of the delivery.

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

2.335 ESCROW FEES
The State will pay the Contractor for all fees and expenses charged by the Escrow Agent as outlined in Attachment 1.

At the State's request, Contractor shall continue to maintain the Escrow provided the State continues to pay escrow fees therefor. The escrow requirements shall terminate upon default of the State in the payment of escrow fees due (which default has not been cured within 30 days after notice), or release of the Deposit (as defined in the escrow agreement) to the State. Upon termination of this agreement, the State shall promptly provide any documents necessary to remove the State as a Beneficiary under the escrow agreement.

2.336 RELEASE EVENTS

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

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

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

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

2.337 RELEASE EVENT PROCEDURES

If the State desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Event in this **Section**, then:

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

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

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

2.338 LICENSE

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

2.339 DERIVATIVE WORKS

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

Glossary

Days	Means calendar days unless otherwise specified.
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/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Audit Period	See Section 2.110
Business Day	Whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
Blanket Purchase Order	An alternate term for Contract as used in the States computer system.
Business Critical	Any function identified in any Statement of Work as Business Critical.
Chronic Failure	Defined in any applicable Service Level Agreements.
Deliverable	Physical goods and/or commodities as required or identified by a Statement of Work
DTMB	Michigan Department of Technology, Management and Budget
Environmentally preferable products	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 that contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.
Excusable Failure	See Section 2.244.
Hazardous material	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	Any interruption in Services.
ITB	A generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders
Key Personnel	Any Personnel designated in Article 1 as Key Personnel.
New Work	Any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.
Ozone-depleting substance	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, hydro chlorofluorocarbons
Post-Consumer Waste	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	Industrial by-products that would otherwise go to disposal and wastes generated after completion of a manufacturing process, but do not include internally generated scrap commonly returned to industrial or manufacturing processes.
Recycling	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.

Deleted – Not Applicable	Section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.
Reuse	Using a product or component of municipal solid waste in its original form more than once.
RFP	Request for Proposal designed to solicit proposals for services
Services	Any function performed for the benefit of the State.
Source reduction	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	Any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
Subcontractor	A company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
Unauthorized Removal	Contractor's removal of Key Personnel without the prior written consent of the State.
Waste prevention	Source reduction and reuse, but not recycling.
Waste reduction and Pollution prevention	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	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 this Contract.