



**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 **2**

to

Contract Number **071B4300040**

<b>CONTRACTOR</b>	Michigan Interactive, LLC
	30600 Telegraph Rd, Ste 2345
	Bingham Farms, MI 48025
	David Freund
	517-241-4341
	dfreund@egov.com
	CV0003206

<b>STATE</b>	<b>Program Manager</b>	Evelyn Quiroga	MDOS
		517-373-2540	
		QuirogaE1@michigan.gov	
	<b>Contract Administrator</b>	Marcy Sims	DTMB
		(517) 275-1132	
		simsm4@michigan.gov	

**CONTRACT SUMMARY**

<b>ELECTION CORE COMP. APPLICATION</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
April 1, 2014	March 31, 2019	5 - 1 Year	March 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

--

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	5 years	<input type="checkbox"/>		March 31, 2024
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$8,069,910.00	\$8,864,333.00	\$16,934,243.00		

**DESCRIPTION**

Effective 11/30/2018, this Contract is exercising all five available option years and is increased by \$8,864,333.00 per the attached document. The revised contract expiration date is March 31, 2024. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on October 30, 2018.

**Cost Table**

	<b>Base Service, NIST cert, maint, enhance and security *</b>	<b>Reserve bank of hours for future enhancements new dev and legislative changes **</b>	<b>Reserve for enhancements to hosting, operational and security services</b>	<b>Reserve bank of hours for maintenance to ENR, HAVA and security ***</b>	<b>Total</b>
<b>Year 1</b>	\$1,379,014.00	\$50,784.00	\$193,000.00	\$68,250.00	\$1,691,048.00
<b>Year 2</b>	\$1,420,384.00	\$50,784.00	\$193,000.00	\$70,297.00	\$1,734,465.00
<b>Year 3</b>	\$1,462,996.00	\$50,784.00	\$178,000.00	\$72,406.00	\$1,764,186.00
<b>Year 4</b>	\$1,521,516.00	\$50,784.00	\$173,000.00	\$74,579.00	\$1,819,879.00
<b>Year 5</b>	\$1,567,161.00	\$50,784.00	\$160,000.00	\$76,810.00	\$1,854,755.00
<b>Totals</b>	<b>\$7,351,071.00</b>	<b>\$253,920.00</b>	<b>\$897,000.00</b>	<b>\$362,342.00</b>	<b>\$8,864,333.00</b>
<i><b>ENR, HAVA &amp; Security - 1,828 Hours ****</b></i>				\$346,380.76	\$346,380.76

\* Maintenance and enhancement services for the existing system (excluding the HAVA & ENR component)

\*\* Reserve of hours for future enhancements to the existing system

\*\*\* Security related updates including patches, assist BOE in file loading and hosting - No New Dev/HW/SW

\*\*\*\* Funding reserved by the MDOS/BOE for additional work that is not included

**STATE OF MICHIGAN**  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET  
 PROCUREMENT

525 W. ALLEGAN STREET  
 LANSING, MI 48933

P.O. BOX 30026  
 LANSING, MI 48909

**CHANGE OF CONTRACTOR NAME and/or TAX ID NUMBER**

CHANGE NOTICE NO. 1  
 to  
 CONTRACT NO. 071B4300040  
 between  
 THE STATE OF MICHIGAN  
 and

CURRENT NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
NIC Technologies LLC 4601 N. Fairfax Drive, Suite 1160 Arlington, VA 22203	David Freund	dfreund@egov.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(517) 241-4341	8589

NEW NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Michigan Interactive, LLC 30600 Telegraph Road, Suite 2345 Bingham Farms, MI 48025	David Freund	dfreund@egov.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(517) 241-4341	0531

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOS	Evelyn Quiroga	(517) 373-2540	QuirogaE1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Malathi Natarajan	(517) 284-7030	natarajanm@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Michigan Election Compliance Core Application (MECCA) - MDOS			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
April 1, 2014	March 31, 2019	5, one year	March 31, 2019
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$8,069,910.00		\$0.00	\$8,069,910.00	

**DESCRIPTION:** Effective August 1, 2016, the Contractor's name has been changed to Michigan Interactive, LLC and the Contract Administrator has been changed to Malathi Natarajan. All other terms, conditions, specifications and pricing remain the same. Per contractor request and agency agreement, and DTMB Procurement approval.

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

**NOTICE  
 OF  
 CONTRACT NO. 071B4300040**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
NIC Technologies, LLC 4601 N. Fairfax Drive, Suite 1160 Arlington, VA 22203	David Freund	<a href="mailto:dfreund@egov.com">dfreund@egov.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 241-4341	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:				
BUYER:	DTMB	Mark Lawrence	517-241-1640	<a href="mailto:Lawrencem1@michigan.gov">Lawrencem1@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b> Descriptive Contract Title (Not always the same language as provided in MAIN)			
<b>Michigan Election Core Comp. Application</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	April 1, 2014	March 31, 2019	5, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			<b>\$8,069,910.00</b>

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. 071B4300040**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
NIC Technologies, LLC 4601 N. Fairfax Drive, Suite 1160 Arlington, VA 22203	David Freund	<a href="mailto:dfreund@egov.com">dfreund@egov.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 241-4341	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:				
BUYER:	DTMB	Mark Lawrence	517-241-1640	<a href="mailto:Lawrencem1@michigan.gov">Lawrencem1@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b> Descriptive Contract Title (Not always the same language as provided in MAIN)			
<b>Michigan Election Core Comp. Application</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	April 1, 2014	March 31, 2019	5, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$8,069,910.00	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07113200018. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

**Notice of Contract #: 071B4300040**

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
NIC Technologies, LLC	Signature
Firm Name	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
Date	Date



**STATE OF MICHIGAN**  
**Department of Technology, Management and Budget**  
**Procurement**

**CONTRACT 071B4300040**  
Michigan Election Compliance Core Applications (MECCA)

Buyer Name: Mark Lawrence  
Telephone Number: 517 241-1640  
E-Mail Address: lawrencem1@michigan.gov



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## **Article 1 – Statement of Work (SOW)**

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

The State of Michigan (SOM), through the Michigan Department of State (MDOS), and with the assistance of the Michigan Department Of Technology, Management and Budget (DTMB), has issued this contract to procure application hosting, maintenance, and enhancements to MDOS' Bureau of Elections (Bureau) **Compliance Core Systems**.

The systems consist of several major areas of responsibility:

- Campaign Finance Act requirements,
- Election Administration,
- Lobby Registration Act requirements,
- Casino Registration Act requirements, and
- Election Night reporting requirements.

These systems, unless otherwise noted, are owned by the State, provided, however, that it is agreed that the MERTS Software is owned by Contractor as additionally set forth in Section 2.326, below.

#### **1.002 BACKGROUND**

The Bureau has created a number of systems that allow the Bureau to meet its statutory obligations under the:

- Campaign Finance Act,
- the Lobby Registration Act,
- the Election Law, and
- the Casino Registration Act.

There is interdependence among the systems. Together these systems are commonly called the Compliance Core Applications. All of these systems are separate from the Qualified Voter File.

The Bureau has invested in the maintenance and the enhancement of the Compliance Core Applications to accommodate new ideas, directives and legislative requirements.

#### **MISSION STATEMENT**

The Bureau is charged with the administration of the Michigan Election Law, Michigan Campaign Finance Act, Michigan Lobby Registration Act and the Casino Registration Act. The Mission of the Bureau is to provide and protect the rights of the citizens of the State to free and fair elections and to provide for and assist with the transparency of the election process by providing citizens with access to publicly filed documents, reports and data relevant to all of the laws administered by the Bureau.

#### **PROBLEM STATEMENT**

The Bureau has a vision of the future for the Michigan Elections Compliance Core Applications (MECCA), which can only be achieved through extensive and flexible automation. This is due in part to the nature of the customer base and the expectations of the customer base. Much of the Bureau's work is dependent on the technology outside of the Bureau. This is most evident with electronic filing of Campaign Statements, transmission of County and Precinct level election results and the Lobby Disclosure program. All levels of public officials use the system including the Governor and the Governor's Committee. The Bureau is expected to provide systems that are compatible with the current levels of technology in the private sector. An effective, integrated application system and a highly efficient and effective infrastructure are needed to achieve the Bureau's vision. The Bureau's vision establishes the need for substantial process changes and creates an environment that dictates a continuously escalating need for change over the coming years.



This Contract provides development and hosting services for the MECCA, which will support the Bureau's current and future business needs.

A portion of the current system, the MERTS software, is vendor-owned and not owned by the State of Michigan. The State retains unlimited license rights. The software is tightly coupled in the State-owned systems

### **GOALS AND BUSINESS OBJECTIVES**

The goal and business objective of this project is to provide the Bureau with a secure system that allows the Bureau to perform all of its current functions and that allows for future growth and enhancements to assist the Bureau in meeting its vision of the future. As explained later in this document, the Bureau has a highly complex network of systems that are integrated together that must be replicated (see Current Applications and Vision Statement/Goals below.

### **OFFICE LOCATIONS**

The Bureau of Elections is located in Lansing, Michigan at 430 West Allegan Street. The Bureau also maintains an office in the Upper Peninsula.

### **DOCUMENTS AND WEB ACCESSIBLE INFORMATION**

Bureau of Elections Web site can be found at <http://www.michigan.gov/elections>.

### **Description of Compliance Core Systems**

#### **APPLICATION SOFTWARE (CURRENT APPLICATIONS)**

The current system in the Disclosure Data Division is referred to as the Compliance Core Application. It houses all major systems in the Bureau with the exception of the Qualified Voter File (QVF). The Compliance Core Applications are in an Informix Database with an Access Interface and is currently hosted by a Contractor. The Compliance Core Applications consist of the major modules listed below. This is not intended to be an exhaustive list or description of the module.

- **Campaign Finance Act, Committee Tracking Module:** This module contains the committee data required to accept, analyze, process, query and publish filing information for each committee filed under the Campaign Finance Act. The module is also programmed to produce all statutory notices and referrals required under the Campaign Finance Act. The Committee Tracking Module is integrated with the Elections Management Systems module, the Imaging Module and the Electronic Filing/Keying database.
  - **Imaging or Scan Module:** The Imaging Module, or often called the scanning module, was developed to allow for the paper campaign statements and other documents filed under the Campaign Finance Act to be imaged. The images are then placed online to provide disclosure of the filings. All incoming and outgoing paper documents are scanned or imaged into the system.
  - **Login Module:** The Login Module provides for the initial tracking of the campaign finance documents that are filed with the Bureau. The paper documents are entered into the system by staff. Those documents that are filed electronically are automatically entered for tracking purposes and are distinguished by an (e) following the document type description. All documents are logged into the system including filings, payments and miscellaneous correspondence.



- **Payments Module:** The Payments Module tracks the committee late filing fees that are assessed, paid or voided. Assessments are generated based on system logic or generated by the analysts. Payments are logged in and then applied to an assessment. Late filing fees are voided when it is determined that they are not owed.
- **Letters Module:** The Letters Module provides the logic for all of the correspondence that must be sent to committees. Some letters are generated automatically in batch processes. Others are generated based on the determination of an analyst. All of the letters are tracked in the Committee Tracking System.
- **Batch Letters and Notices Module:** The Batch Letters and Notices Module provide the logic for correspondence and referrals that must be sent to committees. Some letters are generated automatically in batch processes. Others are generated based on the determination of an analyst. All of the letters and notices are tracked in the Committee Tracking System.
- **R2 Module:** The R2 Module is a tool developed to assist the analysts in reviewing the reports. R2 allows the analysts to query the system for information on a specific report. It also provides a validation of the report that details missing information and possible anomalies in the reports. The R2 program also condenses the data on the schedules that allows for faster and easier printing of the Campaign Statement.
- **Electronic Filing/Keying Module:** The Bureau developed a database and keying screens that allowed entry of the detailed information on the campaign finance reports filed with the Bureau. Access to the database was allowed through query screens on the Internet. The stores the information that is filed electronically via the Internet using the MERTS software. For access to the paper forms provided by MDOS go to [http://www.michigan.gov/sos/0,4670,7-127-1633\\_8723---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_8723---,00.html).
- **MERTS Software:** MERTS is PC-based software designed to automate the committee's reporting requirements. A major feature of MERTS software is its ability to accept electronic campaign finance filings via the Internet. The MERTS electronic filing feature has a direct effect on the Bureau's Back Office system. The Back Office system includes the modules required for staff to process the filings that are received by the Bureau, either in paper or electronically. The two systems work in tandem to accept electronic filings from the campaign finance committees. NIC Technologies built the MERTS proprietary software and maintains [www.MERTSplus.com](http://www.MERTSplus.com) Web site. The software is tightly coupled in the State owned systems. The Contractor would have to procure rights to the source code to support MERTS or develop a new system with the same or enhanced functionality.
- **[www.MERTSplus.com](http://www.MERTSplus.com):** The MERTSplus.com Web site was developed to provide a central location on the Internet where electronic filers can obtain information on the electronic filing program. Committees can sign up for training, download the software, obtain their password, review and print manuals, and view an online WIKI user guide and manuals that provide instructions on the use of the software and the requirements of the MCFA. Committees interested in attending a training session can register online. The site also features a section on "Frequently Asked Questions." The web site provides import and export capabilities of the software. The MERTSplus.com Web site will need to be hosted and supported by the selected contractor. The domain name will be turned over to the State.
- **Elections Management System (EMS) Module:** The EMS Module contains the data required to accept, analyze, process, and publish filing information for each candidate and ballot proposal appearing on the ballot at the State level. The module is also programmed to produce many of the statutory documents and lists required under the Election Law. The module produces County-by-County Election Night results that are published to the Internet after being submitted via an Internet application provided to the County Clerks or key entered by Bureau staff. The EMS Module is integrated with the Campaign Finance Tracking Module as data is moved between modules.



- **Election Night Reporting (ENR) System:** The ENR System uses existing Voting System Vendor Election Management System data import capability and Michigan Qualified Voter File (QVF) Election Wizard data collected from clerks. Ballot data (such as districts, precincts, offices, candidates and proposals) is loaded into the Vendor EMS products eliminating the need for hand keying of data by clerks and vendors reducing errors. Using QVF precinct codes and E-Wizard office and candidate codes data returned from the Voting System Vendor EMS Products from basic data exports could be easily loaded into the State's EMS eliminating the need for hand keying of Election Results.
  - **Michigan Standard Results File Format (MSRFF):** State of Michigan Results File Format required from voting system vendors to load precinct by precinct results data into the State EMS. Format is
- **Precinct-by-Precinct Results Modules:** There are two (2) systems that the Bureau has in place at this time.
  - The **Current Module** contains all of the precinct-by-precinct data for the even year General Elections and is limited to top of the ticket candidates and ballot proposals. This data is keyed into the system and provides for the display and download the precinct level data. The module is integrated with the EMS Module.
  - The **In Development Module** contains the precinct-by precinct data for all elections and all offices and ballot proposals. The Bureau has embarked on a program to improve the collection and dissemination of the precinct level data on election night and for all elections in Michigan. A database structure with a website display has been developed and must be completed in the next contract. This new system must work with the approved voting system vendors' files and must provide for an electronic transmission of precinct results.
- **Lobby Registration Act, Lobby Tracking Module:** This module contains the registrant data required to accept, analyze, process, and publish filing information for each registrant filed under the Lobby Registration Act. The module is also programmed to produce all of the statutory notices and referrals required under the Lobby Registration Act. The system contains a Lobby Internet Filing application that provides for electronic filing of Lobby reports data. The Lobby Tracking Module is integrated with the Lobby database to display keyed or electronically filed data on the Internet.
  - **Login Module:** The Login Module provides for the initial tracking of the documents that are filed with the Bureau under the Lobby Registration Act. The paper filed documents are entered into the system by staff. Those documents that are filed electronically are automatically entered for tracking purposes and are distinguished by an (e) following the document type description. All documents are logged into the system including filings, payments and miscellaneous correspondence.
  - **Payments Module:** The Payments Module tracks the registrants' late filing fees that are assessed, paid or voided. Assessments are generated based on system logic or generated by the analysts. Payments are logged in and then applied to an assessment. Late filing fees are voided when it is determined that they are not to be owed to the Bureau.
  - **Letters Module:** The Letters Module provides the logic for all of the correspondence that must be sent to registrants. Some letters are generated automatically in batch processes. Others are generated based on the determination of an analyst. All of the letters are tracked in the Lobby Tracking System.
  - **Batch Letters and Notices Module:** The Batch Letters and Notices Module provide the logic for correspondence and referrals that must be sent to registrants. Some letters are generated automatically in batch processes. Others are generated based on the determination of an analyst. All of the letters and notices are tracked in the Lobby Tracking System.



- **Web site and Query Screens:** The registration and financial data filed under the Lobby Registration Act is provided on line in a series of query screens provided. Go to [http://www.michigan.gov/sos/0,4670,7-127-1633\\_11945---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_11945---,00.html) to view the query screens and data provided from the system.
- **Casino Registration Act, Casino Tracking Module:** This module contains the registrant data required to accept, analyze, process, and publish filing information for each registrant filed under the Casino Registration Act. The module also provides for the required letters and notices that must be sent to the Casino registrants.
- **HAVA Performance Standards Module:** This module contains the data relevant to the requirements of the HAVA as required by the State Plan and is able to create reports required by the Michigan State Plan.
- **Legal Defense Fund Module:** This module is intended to be integrated into the Committee Tracking Module. No Legal Defense Funds have been filed with the Bureau. Go to [http://www.michigan.gov/sos/0,4670,7-127-1633\\_52013---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_52013---,00.html) for more information.
- **Reports Module:** This module contains a variety of reports including mailing labels for the modules listed.
- **Internet Access:** The Committee Tracking, Lobby Tracking, Casino Tracking, EMS and Precinct Results modules have data and information that is provided via the Internet. The search and downloading capabilities are very extensive. The query screens are located at: [http://www.michigan.gov/sos/0,1607,7-127-1633\\_8723\\_8751---,00.html](http://www.michigan.gov/sos/0,1607,7-127-1633_8723_8751---,00.html), [http://www.michigan.gov/sos/0,4670,7-127-1633\\_11945---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_11945---,00.html), [http://www.michigan.gov/sos/0,4670,7-127-1633\\_8722---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_8722---,00.html), [http://www.michigan.gov/sos/0,4670,7-127-1633\\_11958---,00.html](http://www.michigan.gov/sos/0,4670,7-127-1633_11958---,00.html)

To the best of the State's knowledge, the information provided is accurate. However, the State does not warrant such accuracy, and any variations subsequently determined will not be construed as a basis for invalidating the Contract. The State reserves the right to cancel this Contract, or any part of this Contract, at any time.

The Contractor is advised that the State has methods, policies, standards, and guidelines that have been developed over the years. The Contractor is expected to follow these requirements. Specifically, the State's Project Management Methodology (PMM) must be followed. The PMM may be reviewed at [www.michigan.gov/projectmanagement](http://www.michigan.gov/projectmanagement).

### **1.100 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

The Contractor will provide the following services for the complete and successful implementation of the MECCA Contract providing the functionality required for the State's business operations for the MDOS at 430 West Allegan Street, Lansing, Michigan.

This project consists of the following scope:

- Training
- Documentation
- Hosting and Operation Services
- Maintenance and Support
  - Help Desk
  - Onsite Technical Support



- Knowledge Transfer/Transition at the end of the contract
- Reserve bank of hours for future enhancements and/or legislative mandates
- Modification of MECCA to assist the Michigan Clerk's Offices
- Transition of MECCA to a new database, such as Oracle

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 contract scope does not include any hardware, software, or application support for the Qualified Voter File. Nor does the scope of this contract include any responsibilities for hardware, software, or support that is the responsibility of DTMB:

- Personal computer (PC) hardware, standard PC packaged software, LAN's and LAN servers used by State personnel and supplied by DTMB.
- Internal State of Michigan telecommunications network (LMAN) excluding any required dedicated high-speed lines required to allow Elections' staff access to the Contractor's Data Center locations must be in compliance with the Service Level Agreement.
- All print operations using MDOS network printers.

### 1.103 ENVIRONMENT

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the State Unified Information Technology Environment (SUITE).

The State has methods, policies, standards and procedures that have been developed over the years. The Contractor is expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this Contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

#### **Enterprise IT Policies, Standards and Procedures:**

<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The MDTMB Project Manager must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDTMB, before work may proceed based on the changed environment.

#### **Enterprise IT Security Policy and Procedures:**

[http://www.michigan.gov/documents/dmb/1310\\_183772\\_7.pdf](http://www.michigan.gov/documents/dmb/1310_183772_7.pdf)

[http://www.michigan.gov/documents/dmb/1310.02\\_183775\\_7.pdf](http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf)

[http://www.michigan.gov/documents/dmb/1325\\_193160\\_7.pdf](http://www.michigan.gov/documents/dmb/1325_193160_7.pdf)

[http://www.michigan.gov/documents/dmb/1335\\_193161\\_7.pdf](http://www.michigan.gov/documents/dmb/1335_193161_7.pdf)

[http://www.michigan.gov/documents/dmb/1340\\_193162\\_7.pdf](http://www.michigan.gov/documents/dmb/1340_193162_7.pdf)

[http://www.michigan.gov/documents/dmb/1350.10\\_184594\\_7.pdf](http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf)

**The State's security environment includes:**

- MDTMB Single Login.
- MDTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

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- DTMB Single Login.
- DTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

*DTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and DTMB Office of Enterprise Security.*

**IT Strategic Plan:**

<http://www.michigan.gov/itstrategicplan>

**IT eMichigan Web Development Standard Tools:**

[http://www.michigan.gov/documents/som/Look\\_and\\_Feel\\_Standards\\_302051\\_7.pdf](http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf)

**The State Unified Information Technology Environment (SUITE):**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

**Agency Specific Technical Environment - RESERVED****1.104 WORK AND DELIVERABLE****I. Services and Deliverables To Be Provided**

The Contractor must provide deliverable/services and staff, and otherwise do all things necessary or incidental to the performance of work as set forth in this Contract. All requirements are mandatory except where specifically described as optional.

The systems consist of several major areas of responsibility: Campaign Finance Act requirements, Election Administration, Lobby Registration Act Requirements, and Casino Registration Act requirements.

**A. Requirements Analysis**

Meetings will be held to validate and verify the requirements. The requirements validation document will include:

- requirements that the vendor immediately meets,
- requirements that can be met with modification,
- requirements that cannot be met.

**Contractor Responsibilities**

- Contractor shall attend meetings
- Prepare and submit the requirements validation document

**State Responsibilities**

- Provide staff, SME
- Provide facilities
- Review and approve the requirements validation document

**Deliverable(s)**

- requirements validation document

**Acceptance Criteria**

See section 1.501 Acceptance Criteria

**C. Development****DEVELOPMENT SOFTWARE AND SERVICES REQUIREMENTS**

When the Contractor makes changes to any of the systems or applications for the Bureau, it is the Contractor's responsibility to update or create new documentation. All modified or new documentation must be completed within 30 days (or sooner) of the change. The Bureau must approve all documentation before the Contractor's responsibility will be considered completed. The Bureau will approve the format to be used to create the documentation.

**Contractor Responsibilities**

- Develop systems according to approved designs
- Document systems that are developed
- Facilitate final code reviews

**State Responsibilities**

- Review documentation
- Participate in code reviews

**Deliverable(s)**

- Technical Design documents

**Acceptance Criteria:**

See section 1.501 Acceptance Criteria

**H. Software**

The Contractor's shall keep all operational and application software compatible with the newest established technology. If the hardware or software markets make significant changes and/or improvements that require modifications and/or rewrites of the Bureau's applications, it is the Contractor's responsibility to keep the Bureau's systems current with the latest technology advancements.

**SYSTEM MANAGEMENT SOFTWARE** Contractor shall provide sufficient system management software, such as the operating system, backup storage management, performance monitors, and system tuning software to maintain and monitor the agreed upon service levels. The Contractor will use the system management software in the automation of data center operations to provide efficient, cost effective usage of data center resources.

- Big Brother Network/Server Monitor
- Barracuda Load Balancer with IDS/IPS Intrusion Detection

**Database Software**

- IBM Informix Dynamic Server Version 11.70.FC4GE
- MySQL 5

**REPORT MANAGEMENT AND DISTRIBUTION SOFTWARE:** Contractor will provide report management and distribution software to support application reporting and distribution activities. The supplied reporting software will:

- Be easy to learn and user friendly, allowing users to view reports online, and then print all or designated portions of the report.
- Include self-use training materials, such as an online help feature and an online tutorial.
- Support standard ongoing report printing and distribution patterns.



The software is:

- Report Management and Distribution Software
- Microsoft Access Reports
- Informix 4GL Reporting
- Ghostscript
- HTMLDoc
- Jasper Reports
- Mantis (issue tracking and reporting)

**BACKUP, ARCHIVAL, AND RESTORE SOFTWARE** (Contractor-hosted option): The Contractor will be responsible for providing all backup, archival, and restoration software. Describe the Contractor's proposed level of software support in the areas of data backup, archival, and restore availability at the Contractor's data center. Include at a minimum:

- Operating system features and utility programs
- Access method features and utility programs
- Database features and utility programs that contribute to the overall solution of the backup, archival, and restore issue
- Backup features
- Archival features
- Restore and recovery features
- Batch and online backup and recovery features
- Database rollback features
- Data logging features
- Any other features or comments pertinent to this subject that the Contractor feels would be helpful or relevant

The software is:

- IBM Informix Ontape
- IBM Informix Dbexport
- Oracle Solaris ufsback/ufsrestore
- Oracle Solaris Jumpstart
- Oracle/SUN container zone snapshots
- Primera Disk Publisher 4101 BluRay system
- ZFS snapshots
- NetApp snapshots
- DAR archiving for backups to BluRay machine

**SECURITY SOFTWARE:** The Bureau must be able to maintain control of all security management functions, particularly those with a direct impact on the application software and its data. Due to confidentiality requirements of State and federal laws, statutes and ordinances, the Bureau must employ controls and establish appropriate audit trails on all operating system and application files, user and operator IDs, archival methods, and network connections. The operating system environments must not share connections (direct, shared, chained, or switchable) with any operating system environments not used by the Bureau without the direct and specific approval of the Bureau. The Contractor will provide data center security software with the capability to protect items such as, but not limited to:

- System level access
- On-line access
- On-line transactions
- Program libraries
- Datasets



**VIRUS PROTECTION SOFTWARE:** Virus protection software will be provided by the Contractor to protect all software used in support of, or created pursuant to this contract.

The Contractor shall provide and keep current anti-virus software on all CONTRACTOR workstations and Microsoft Windows servers:

- McAfee Antivirus/Virus Scan
- Trend Micro Titanium/Business Security

As technology continues to be updated and refreshed throughout the project, the Contractor shall work with the Bureau to approve and document all new software solutions used in support of MECCA.

### **Software Support Description**

CONTRACTOR support coverage:

- IBM – All Informix products
- Microsoft – Visual Studio development tools and Operating Systems
- Dell – Hardware
- Oracle – Solaris O/S and hardware
- Jacadis – Acunetix Web Vulnerability Scanner software
- Apple – Hardware
- Proposed Software
- MRTG - (Multi Router Traffic Grapher) is used to monitor the traffic usage on all router interfaces.
- Nagios - Monitoring system that can send alerts based on various system parameters.
- Puppet - A tool designed to manage the configuration of UNIX machines.
- Wireshark - Network protocol analyzer which captures and interactively browses network traffic.
- Operating and Applications Software
- Oracle Solaris 10
- Windows Server 2008 R2
- Windows XP SP3
- Windows Vista
- Windows 7
- Oracle JAVA
- Microsoft Access
- Resin Application Server
- Tomcat Application Server
- Apache 2 Web Server
- PHP5
- VMware Vsphere
- Bind – DNS and OpenLDAP
- IBM/Informix-Client SDK Version 3.70.FC4
- IBM/Informix LIBASF LIBRARY Version 3.70.FC4
- IBM/Informix ODBC LIBRARY Version 3.70.0000.FC4
- IBM/Informix C++ API 3.70.FC4
- IBM/Informix LIBDMI LIBRARY Version 3.70.FC4
- IBM/Informix EMBEDDED SQL for C Version 3.70.FC4
- IBM/Informix LIBGEN LIBRARY Version 3.70.FC4
- INFORMIX LIBGLS LIBRARY Version 5.00.FC5GE
- IBM/Informix LIBOS LIBRARY Version 3.70.FC4
- IBM/Informix LIBSQL LIBRARY Version 3.70.FC4
- IBM INFORMIX-4GL Rapid Development System Version 7.50.UC5
- IBM INFORMIX-4GL Rapid Development System Run Time Facility Version 7.50.UC5
- IBM INFORMIX-SQL Version 7.50.UC5



## **Technology Advances Affecting BOE's Systems & Applications**

Wider adoption of public internet access makes centralized systems a logical replacement for distributed systems like the MERTS filer software.

Mass adoption of mobile devices with internet capability makes the use of more mobile applications and services like instant messaging and Twitter appropriate tools for future BOE solutions, such as the Twitter feed currently being used to communicate with MERTS filers and the Michigan CFS iPhone/Android mobile application currently made available to the public via the State/CONTRACTOR partnership.

## **Database Technology Advances**

Already adopted as an MDOS database software standard, Oracle 11g can more readily interface with existing State datasets, such as the Qualified Voter File (QVF). This kind of compatibility opens new possibilities for CONTRACTOR to partner with the State on behalf of the BOE to provide truly integrated, highly scalable system solutions for the citizens of the State of Michigan. The transition to new database software would require a statement of work, and a contract change notice.

## **Contractor Responsibilities**

- Provide software as required
- Procure any software that is needed

## **State Responsibilities**

- Approve software proposed for system
- Review software to ensure it meets state guidelines for security.

## **Deliverable(s)**

- Software installed and configured

**Acceptance Criteria:** The contractor must have all software applications in place and working with the hardware by the start of this contract. This includes all testing and approvals.

## **I. Hardware**

The Contractor shall provide the necessary hardware to support the system. This includes, but is not limited to CPU, disk storage, archival media, print, output distribution, Web hosting, firewall/security, and communication capabilities to be compatible with the requirements of and to adequately meet specific performance goals for applications. The equipment is not required to be dedicated to this contract as long as other co-usage does not hinder, interfere, or provide a security risk with the performance of this contract.

The Contractor shall provide any hardware or software required to support the current printer, scanner, and other hardware without the loss of any network capabilities.

The Contractor shall provide a comprehensive security plan which must be approved by DTMB Office of Enterprise Security.

Contractor's data processing facilities will be managed with appropriate staff using operational procedures and standards acceptable and agreed upon by the Bureau and will provide the following:

- Location of facilities within the continental United States;
- Transparency of facility location to the Bureau users in Michigan (i.e., service and performance will be comparable).

Contractor shall provide all of the processing facility operational management services and personnel to support the applications, including, but not limited to the following services:

- Disk storage;
- Backup;
- Data security;



- Data transmission security;
- Web hosting services;
- The Bureau and User Help Desk(s)
- Disaster recovery procedures and capabilities.

### **State and Contractor Roles:**

The roles the State and CONTRACTOR will need to provide will primarily remain the unchanged. The State/BOE will provide State-side Project Management and Subject Matter Expertise. The State/BOE will assist the CONTRACTOR PM and Technical Lead in verifying project scope, project requirements, and project approval, and will ensure that each of the State's Stakeholders in the project remain informed and concerns addressed. The CONTRACTOR will have the CONTRACTOR PM available to manage projects from the beginning of Scope Definition and Requirements Gathering through Project close down. The CONTRACTOR PM will continue to provide updates to all Stakeholders on the pre-defined (via the BOE) schedule. CONTRACTOR will provide all relevant and requested project documentation. CONTRACTOR's technical resources will be available to the State/BOE for consultation and assistance. The CONTRACTOR PM will work closely with the State/BOE CA and PM to ensure our continued partner success.

Additional Roles assumed during Requirements Phase regularly include the following:

- BOE Analyst(s): Assist BOE and CONTRACTOR PM's in defining requirements.
- State/BOE Technical Contact: Usually the BOE and CONTRACTOR's contact person for items needed from DTMB, Non-CONTRACTOR hardware or software is required or general BOE technical information is required for project.
- CONTRACTOR Tech Lead: Ensures documents captured as many known technical requirements as possible
- CONTRACTOR DBA: CONTRACTOR Tech Lead and PM interface with DBA to ensure database feasibility/issues are addressed.
- CONTRACTOR Systems Administrator: CONTRACTOR Tech Lead and PM interface with System Administrator to ensure infrastructure items are addressed.
- CONTRACTOR Security Analyst: CONTRACTOR Tech Lead and PM interface with Security Analyst to ensure solution meets all security standards and identifies any possible negative exposure that may exist.

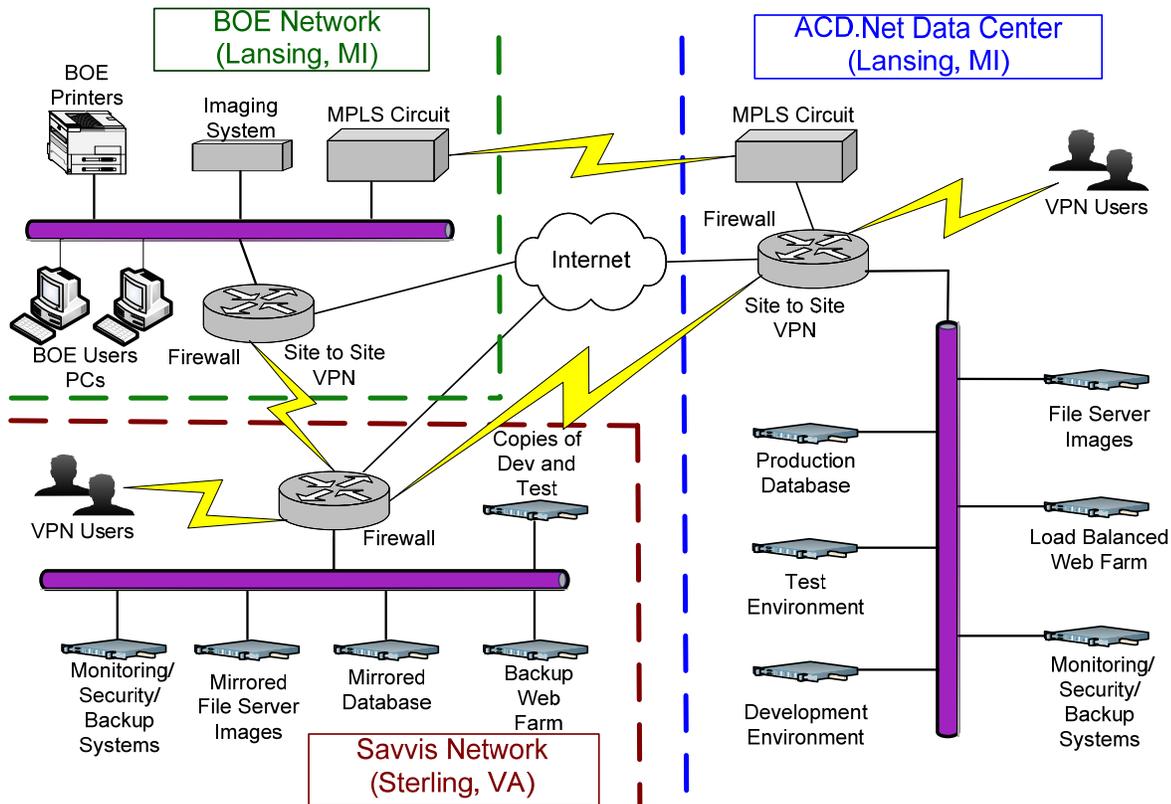
### **Proposed Hardware Infrastructure**

#### **Key Architectural Points**

- The core of the BOE solution is based on both SPARC and Intel-based Oracle/SUN servers running the Solaris 10 UNIX operating system.
- File system server solutions include both NetApp and Oracle/SUN ZFS solutions, providing both NFS and CIFS connectivity layers for cross-platform capabilities.
- Virtual machines (VMs) are used where appropriate to fully leverage the hardware with expanded use of virtualization planned.
- VMs are used for Windows build servers and multiple UNIX development servers.
- A gigabit network backbone provides the throughput necessary to burst during filing periods, as well as support the transfer of large amounts of data during nightly backup processes.
- Network is subnetted and firewalled into functional areas for security.
- Data is transferred in near real-time to a standby secondary site in Sterling, VA. Database logs are transmitted asynchronously every five minutes. Common file system data is synchronized every five minutes.
- A load-balanced web and application server farm is easily expanded by adding virtual machines and hardware.
- Daily backups run to file server snapshots while rsync is utilized to synchronize servers with monthly and quarterly backups to BluRay media for archival purposes.



The following is a high-level diagram of the core pieces of the CONTRACTOR-hosted solution. Due to the sensitive nature of their contents, more detailed diagrams will not be shown here, but are available upon request.



**Technology Standards**

NIC Technologies uses a systematic approach for assessing the conceptualization, design, implementation, and the general utility of the many new technology concepts and products on the market today. The processes listed below establish the baseline for evaluating new technologies, technology requests and discussions and the development of new technology standards and procedures.

The value and focus of our technology evaluations include:

- To provide information to the STATE CA and CONTRACTOR PM on aspects of the program that work well and potential problems
- To identify potential problems early so these items can be corrected before serious problems occur
- To guide further evaluation efforts. For example, an evaluation may bring to light existing project issues that need to be examined in greater detail or an initial evaluation of program implementation may be used to guide a later evaluation of long-term impact
- To provide information on what additional technical assistance may be required
- To determine what impact the current architecture is having on the end users

The Contractor shall use a variety of methods for evaluating new technology and software products.

Formative evaluations are useful for numerous purposes, including:

- Helping identify problems early on, prior to experiencing problems and with sufficient time to adjust or correct without project impact
- Serving as an evaluation of processes and improving program management
- Providing an opportunity to collect baseline data for future summative (or "impact") evaluations
- Identifying appropriate outcomes for summative evaluations



Summative, or cumulative, evaluations provide evidence for a cause-and-effect relationship. Summative evaluations are useful for numerous purposes, including:

- Assessing long-term effects and value of system upgrades and changes
- Providing quantified data on system impacts, both positive and negative
- Providing objective information on patterns and system changes across time

**Partner Technology Standards**

In addition to the standards and methodologies already mentioned, NIC Technologies is also aware of and incorporates elements of known State of Michigan technology standards as referenced in the links below:

IT Strategic Plan	<a href="http://www.michigan.gov/itstrategicplan">http://www.michigan.gov/itstrategicplan</a>
eMichigan Web Development Standard Tools	<a href="http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf">http://www.michigan.gov/documents/som/Look_and_Feel_Standards_302051_7.pdf</a>
The State Unified Information Technology Environment (SUITE)	<a href="http://www.michigan.gov/suite">http://www.michigan.gov/suite</a>

**Programming Environment**

Database Production	Informix IDS 11 running on Oracle/SUN Solaris 10 OS
Database Test	Informix IDS 11 running on Oracle/SUN Solaris 10 OS in a Solaris Zone VM
Webserver Production	Apache 2, Apache Tomcat, Resin, PHP5 running on Solaris 10 OS
Webserver Test	Apache 2, Apache Tomcat, Resin, PHP5 running on Oracle/SUN Solaris 10 OS in a Solaris Zone VM
File Servers	NetApp& Oracle ZFS over NFS/CIFS to Unix/Windows clients
Windows Build Servers	Windows Server 2008 R2 running on a VMware VM

**Hardware Refresh Plan**

Every year, The Contractor shall conduct a thorough review of the existing hardware infrastructure and its capacity. Based on these findings, the Contractor shall update the effective hardware replacement plan for the remaining years of the contract. Any hardware deemed obsolete by industry standards at the time of this review is upgraded or replaced.

**Contractor Responsibilities**

- Provide Hardware specifications
- Procure any hardware needed

**State Responsibilities**

- Approve hardware design

**Deliverable(s)**

- Detailed description of the infrastructure required.

**Acceptance Criteria:**

The contractor must have all hardware in place and working with the software applications by the start of this contract. This includes all testing and approvals.



## J. Documentation

The Contractor shall provide adequate documentation of all systems, applications, processes to provide a clear representation of the system, and functions provided by the systems. Further, the contractor will provide any documentation provided for in other sections of the contract. This may include the documents listed below. The Bureau will work with the contractor to develop standard reports needed to document the progress made during the contract.

- 1) A minimum of two (2) copies of the following documentation in an electronic format, online, and in hard copy will be provided:
  - a. User and Technical Manuals - On-line and Hard Copy
  - b. Data Element Dictionary
  - c. Operations Manual
  - d. All updates of documentation during the term of the Contract, software license and maintenance agreement
- 2) The following documentation is provided for all modules and program development:
  - a. System-wide documentation and specifications
  - b. Baseline End-User training manuals to be used as a basis for "User Manuals" and online help
  - c. Installation procedure
  - d. Module configuration documents sufficient for configuration maintenance purposes
  - e. Testing scripts
  - f. Specification documentation
  - g. Production migration
- 3) The documentation of components, features, and use of the hardware/software shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.
- 4) All system, operational, user, change, and issue documentation must be available in electronic format, published to an intranet website, accessible to State users, updated regularly with unique numerical identifiers for each section, and be consistent with the most current version of the application(s) and three (3) previous versions.
- 5) All system, operations, user, change, and issue documentation is to be organized in a format, which is approved by the State. It will facilitate updating and allow for revisions to the documentation to be clearly identified including the three (3) previous versions.
- 6) The Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.
- 7) The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

CONTRACTOR will provide all such requested documentation within the specified timeframes, should those documents not already have been provided to the State.

CONTRACTOR will provide and update all system, application, and process documentation as systems are upgraded. Documentation will be available in both electronic and hard copy. CONTRACTOR will also support all user manuals via the content management system (aka. Wiki) and support the BOE in their efforts as well.

### State and Contractor Roles

- The State/BOE will provide State-side Project Management and Subject Matter Expertise.
- The State/BOE will assist the CONTRACTOR PM and Technical Lead in verifying project scope, project requirements, and project approval, and will ensure that each of the State's Stakeholders in the project remain informed and concerns addressed.
- CONTRACTOR will continue to have the CONTRACTOR PM available to manage projects from the beginning of Scope Definition and Requirements Gathering through Project close down.
- The CONTRACTOR PM will continue to provide updates to all Stakeholders on the pre-defined (via the BOE) schedule.



- CONTRACTOR will also continue to provide all relevant and requested project documentation. CONTRACTOR's technical resources will remain available to the State/BOE for consultation and assistance. The CONTRACTOR PM will continue to work closely with the State/BOE CA and PM to ensure our continued partner success.

Additional Roles assumed during Requirements Phase regularly include the following:

- BOE Analyst(s): Assist BOE and CONTRACTOR PM's in defining requirements.
- State/BOE Technical Contact: Usually the BOE and CONTRACTOR's go to person for items needed from DTMB, Non-CONTRACTOR hardware or software is required or general BOE technical information is required for project.
- CONTRACTOR Tech Lead: Ensures documents captured as many known technical requirements as possible
- CONTRACTOR DBA: CONTRACTOR Tech Lead and PM interface with DBA to ensure database feasibility/issues are addressed.
- CONTRACTOR Systems Administrator: CONTRACTOR Tech Lead and PM interface with System Administrator to ensure infrastructure items are addressed.
- CONTRACTOR Security Analyst: CONTRACTOR Tech Lead and PM interface with Security Analyst to ensure solution meets all security standards and identifies any possible negative exposure that may exist.

### **Contractor Responsibilities**

Provide documentation as outlined in this section

The Contractor will provide full and complete system and application documentation. The Bureau will provide all documentation it has to the selected Contractor. It will be the Contractor's responsibility to assure the documentation is complete and accurate within six (6) months from the establishment of the contact.

### **State Responsibilities**

Review and approve documentation provided

### **Deliverable(s)**

- User manuals
- Technical manuals
- BOE Multi-year technology plan (due within 30 days of the contract start date)
- Method for Maintaining BOE Technology Plan
- Data Center Standards and Procedures Manual (due within 120 days of the contract start date)
- Data Center Standards and Procedures Manual Revision Schedule (due within 120 days of the contract start date)
- Disaster Recovery Test Plan (due within 30 days of the contract start date)
- Disaster Recovery Manual (due within 30 days of the contract start date)
- Operation manuals.
- Troubleshooting Manual
- Off-the-shelf software manuals (if appropriate).
- Software Users Manuals.
- Computer Programming Manual.
- Firmware Support Manual.

### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.



K. Hosting and Operation Services  
**FACILITIES (DATA CENTERS)**

The Contractor is not required to dedicate the hosting facility serving the Bureau solely to the Bureau. The Primary Production Site must be located in **the City of Lansing or the vicinity of the City of Lansing**. The purpose is to ensure that the Bureau staff is able to work directly from the primary site in the event that the State systems fail on critical dates and deadlines. The Primary site can be used to conduct work and make information accessible to the public.

The Secondary Production Site must be located at a physically separate location (greater than 200 miles). This secondary production environment referred to as the Secondary Production Site Data Center will be a fail-over site. Because these sites must be mirrored, the data in both sites must continuously replicate to be consistent and current. In the event that the Primary Production Site becomes non-operational, all activity will be routed to the Secondary Production Site.

The development and production environments must be maintained on two separate servers. The file system for the production environment must have sufficient storage capacity.

- The Contractor will be responsible for all aspects of the systems operation including, but not limited to:
  - workload scheduling,
  - performance management,
  - capacity management,
  - change management,
  - problem management,
  - service level management,
  - resource accounting,
  - end-of-contract exit process, and
  - disaster recovery.

All system transactions from users of the public Web site and all MERTS filers will interact with the web servers located within a DMZ. The configuration must minimize the risk of intrusion due to the limited access to the primary production servers and file system. The configuration must be scalable and load-balanced to handle heavy internet traffic or peak electronic filing submissions.

The Bureau staff must have direct network access to the production environment via a dedicated circuit if the Contractor will be hosting the environment.

**OPERATING ENVIRONMENT**

The Contractor will provide separate production, test, development, and other operating environments that are compatible with one another to support software migration and future enhancements.

The Contractor will use a version management tool to promote code from one environment to another in a smooth and controlled manner. The contractor must comply with DTMB Change Control procedures for production changes to a State Hosted environment. In addition, all changes must be approved by the Bureau of Elections.

The Contractor will establish a reporting structure and process to keep the Bureau informed concerning significant technical events or changes in any of the operating environments.

The Contractor will support all production application software and all applicable production processing to include online transaction processing and all forms of production batch processing.



The Contractor will provide the necessary processing capacity, complete data center operational support, system programming support and systems software support required to support the Bureau's application software.

## **NETWORK**

The Contractor will maintain the use of asynchronous data replication. All supported systems must meet or exceed current standards.

- Back up: Mirroring data and media backup required (full back-up weekly and incremental daily).
- Virus Protection: Virus protection and intrusion protection must also be included and meet or exceed State of Michigan standards.

## **SERVER REFRESH**

The Contractor will refresh the servers to keep them in good working condition.

## **COMPUTER OPERATIONS**

Depending on hosting options being specified, the Contractor will provide all necessary computer operations services to support the process of the applications such as, but not limited to:

- Operation of computer hardware,
- hardware and data center maintenance activities,
- disk maintenance,
- Web hosting services,
- control and operation of online systems,
- support of "on request" jobs or reporting,
- support of "re-runs" when necessary,
- operation of applications at peak machine efficiency in a manner that is conservative of site resources,
- the Bureau staff and public Help Desk,
- daily coordination and communication between the Contractor and the Bureau,
- and provision of data center operations activities not mentioned here but relevant to processing for the applications.

The Bureau agrees to work in concert with the Contractor and to provide business objectives, application plans, and other related data.

## **DISASTER RECOVERY SERVICES**

The Contractor shall provide reliable systems protection, data protection, and disaster recovery for the applications that, at a minimum, comply with the Service Level Agreement conditions described below.

The Contractor will develop an overall Bureau Disaster Recovery Plan. The Plan will be a detailed description of all strategies, standards, procedures, schedules, and resources required to complete the disaster recovery process. The document is a detailed work plan, which drives the disaster recovery effort.

The objectives of the Disaster Recovery Plan must include, among other things:

- Definition of roles and responsibilities.
- Ease of implementation.
- Quick restoration of operations.
- Currency and compatibility with normal operations.

The Disaster Recovery Plan will contain detailed descriptions of all strategies, standards, procedures, schedules and resources required to complete the disaster recovery process, including such elements as:



- Step-by-step actions to be taken immediately and as part of a more detailed survey of damages to determine additional actions necessary.
- Members of the disaster recovery team including names, titles, responsibilities under the plan and contact information for key team members.
- Decision tree in a disaster situation.
- Actions required by the Bureau in a coordinated disaster recovery plan, and impacts on processing during the recovery process.
- Security provisions at original, secondary and recovery sites during recovery.
- Backup provisions including off-site storage during recovery.
- Periodic testing procedures live and simulated, for the disaster recovery plan.
- Long-term planned solutions, such as rebuilding the data center.

The Disaster Recovery Plan will provide that the Bureau will make the ultimate decision as to whether to declare a disaster.

The Contractor will develop an overall Disaster Recovery Manual. The Manual will be a detailed reference guide that provides technical specifications, telephone numbers, and addresses of key disaster recovery team members, special processing characteristics, and other system specific detailed reference material. The Disaster Recovery Manual serves as a supplement to the Disaster Recovery Plan. The Contractor, in conjunction with the Bureau, will develop a Disaster Recovery Test Plan.

- The Bureau will retain overall responsibility for the Test Plan, but will expect the Contractor to cooperate fully with all disaster recovery procedures.
- The Test Plan will specify rigorous testing procedures, which are designed to certify the quality of the Bureau Disaster Recovery Plan.
- The test plan will define the goals, scope, and schedules for evaluating the quality of recovery test teams, data, computer equipment, and resources.
- The goal of disaster recovery testing will be to evaluate the proficiency and competence of resources necessary to complete a disaster recovery implementation.
- The test plan will include each team member required to perform the actual implementation and describe his or her roles and responsibilities.
- The Disaster Recovery Test Plan will be executed at least once every twelve (12) months.
- Written evaluations of test results are to be used to improve disaster recovery procedures and refine the recovery plan.

The secondary production site hardware, software, and data will continue to meet or exceed the agreed upon service levels, including those for processing, storage, security, access, and data integrity. Other backup site requirements include:

- Contractor will plan, arrange, test and provide a Secondary Production Site, which will not be affected by the declaration of a disaster at the Contractor's Primary Production Site.
- The Secondary Production Site shall be accessible by airports, major highways, and other public transportation, and located within the continental United States.
- The Secondary Production Site will contain hardware and communications facilities, which are sufficient to handle normal processing loads.
- The backup processing site will be available for Bureau inspection at any time at the Contractor's convenience, upon 12-hour notification.

**In the event of a declaration of a disaster by the Bureau at the Primary Production Site, the Contractor will restore processing at the Secondary Production Site within 3 hours.**

The Contractor's Project Manager or a designated representative will be available 24 hours per day, 7 days per week, in order to receive official notification of a disaster and to coordinate the Contractor's response to the disaster. Upon official declaration of a disaster by the Bureau, the Contractor shall immediately initiate and execute the procedures to satisfy its responsibilities as described and defined in the overall Disaster Recovery Plan.



The Contractor will maintain a complete and current backup copy of:

- All production application software
- All production application data
- All operating system software and other applicable system software
- All other files or software deemed necessary to restore the Bureau's operating environments to an alternate site, if need be

The Contractor will provide another complete and current backup copy of all files or software deemed necessary to restore the Bureau's operating environments to an alternate site. The Bureau will maintain this back-up copy.

### **CAPACITY MANAGEMENT**

The Contractor will perform the necessary capacity management activities to ensure that the Bureau will have the necessary computing resources available to meet the agreed-upon service levels, as detailed in the Service Level Agreement (SLA).

#### **State and Contractor Roles:**

- The roles the State and CONTRACTOR will need to provide will primarily remain the unchanged.
- The State/BOE will provide State-side Project Management and Subject Matter Expertise.
- The State/BOE will assist the CONTRACTOR PM and Technical Lead in verifying project scope, project requirements, project approval and ensure that each of the State's Stakeholders in the project remain informed and concerns addressed.
- CONTRACTOR will have the CONTRACTOR PM available to manage projects from the beginning of Scope Definition and Requirements Gathering through Project close-down.
- The CONTRACTOR PM will provide updates to all Stakeholders on the pre-defined (via the BOE) schedule.
- CONTRACTOR will also provide all relevant and requested project documentation.
- CONTRACTOR's technical resources will remain available to the State/BOE for consultation and assistance. The CONTRACTOR PM will continue to work closely with the State/BOE CA and PM to ensure our continued partner success.

Additional roles assumed during Requirements Phase regularly include the following:

- CONTRACTOR Tech Lead: Ensures documents captured as many known technical requirements as possible
- CONTRACTOR DBA: CONTRACTOR Tech Lead and PM interface with DBA to ensure database feasibility/issues are addressed.
- CONTRACTOR Systems Administrator: CONTRACTOR Tech Lead and PM interface with System Administrator to ensure infrastructure items are addressed.
- CONTRACTOR Security Analyst: CONTRACTOR Tech Lead and PM interface with Security Analyst to ensure solution meets all security standards and identifies any possible negative exposure that may exist.

The processes that CONTRACTOR has placed into effect to provide the BOE hosting solution rely heavily on concepts such as hardware virtualization, high-availability, and effective security-hardening procedures.

### **Description of the Hardware Solution**

The Contractor shall operate through a primary production environment located in Michigan (Data Center Site One) and also employs a mirrored secondary alternate environment located in Virginia (Data Center Site Two) as a fail-over site. Because these sites are mirrored, the data in both Site One and Site Two is continuously replicated (or synchronized) so that the two data centers are consistent and current. In the event that Site One becomes non-operational, all activity (BOE Staff, MERTS Filers, Users of BOE Public Web Pages) will be routed to Site Two using defined fail-over processes and within defined service levels.



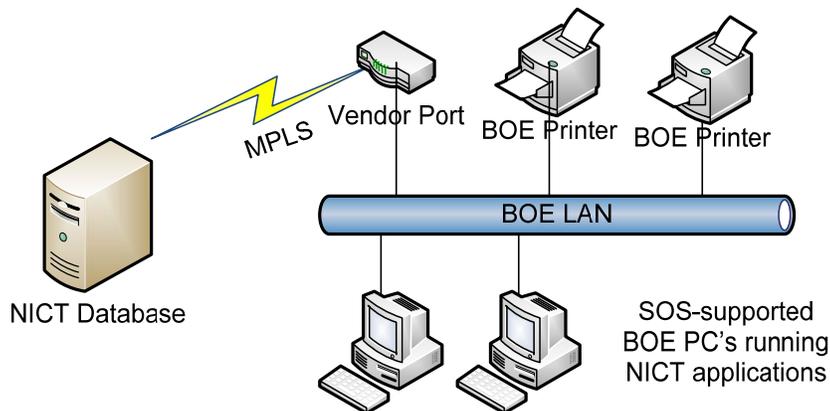
Site One serves as the area for new development and testing. The development/test environment and production environment are maintained on two separate enterprise-class Sun (Oracle) servers. The File System for the production environment is also maintained on a separate enterprise-class Oracle ZFS Dual High Availability Cluster server with a 7.4TB (real) capacity, expandable to 432TB. This solution separates multiple system tasks onto different physical (and virtual, where appropriate) servers to maximize system performance. Storage space is easily expanded and essentially only limited by the amount of rack space available. Backups are maintained on a separate NetApp file system.

All system transactions from users of the BOE's Public web pages and all MERTS Plus filers interact with the CONTRACTOR servers located within a 'Demilitarized Zone' (DMZ). This phrase denotes a group of servers that allow users to read and submit transactions to servers without directly interacting with the production database environment. This configuration minimizes the risk of system intrusion due to the limited access to the primary database production server and file systems. The DMZ also uses multiple load-balanced servers to properly handle heavy system traffic and load across more than one server. This also allows for the Auto-Failover of server traffic to an operational machine. The load balancers include intrusion-detection features to further isolate critical system resources. This configuration is scalable and can scale to include more or less servers as capacity demands, such as during heavy Internet traffic or peak electronic filing submissions following the implementation of mandatory electronic filing.

The PC's used by the BOE staff have direct access to the production server via a dedicated MPLS line. A Hardware Configuration Diagram is in section I. Hardware.

**Printer Configuration Diagram**

All system printers are in the SOS domain and under the control MDOS. Connectivity to these devices is provided over the MDOS State network from MDOS supported PC's. CONTRACTOR applications use this State-provided layer to provide printed reports to BOE office users.



**Communications Plan**

The CONTRACTOR communications plan on behalf of the BOE is outlined in the points below.

**Data Communications Capacity Plan**

CONTRACTOR has sized the data communications plan based on the volume numbers and current hardware items given in the RFP. Also, our ten plus years of experience with the BOE dataset has provided CONTRACTOR with regular processes to handle communications needs such as statistical and burst queries of information over short time periods. These statistics allow us to plan and provide for the proper capacity and data speeds that the BOE requires to properly serve its' customers.

**Remote Access Configuration Diagram**



Please refer to the Hardware Configuration Diagram section and the diagram provided therein for elements of CONTRACTOR's remote access configuration. Due to the sensitive nature of their contents, more detailed diagrams are available upon request.

#### Connectivity to Contractor's Facilities

Two routes are available to the Site#1 datacenter from the BOE. One route is via the dedicated MPLS circuit between Allegan Street and the CONTRACTOR datacenter. The other route is via the Internet. These paths are depicted in the Hardware Configuration Diagram provided above.

#### Facilities Description

CONTRACTOR has deployed two synchronized production environments each located in geographically dispersed data centers. The advantages of this type of network configuration include automated peak volume load balancing features for the production system and the provision of a fully functional failsafe production environment in the event that unforeseeable hardware or Internet related downtime occurs. The Data Center providers were selected based on their proven capabilities to meet and exceed the connectivity, support, and reliability requirements of the State.

**CONTRACTOR Site#1:** ACD.net datacenter in Lansing, Michigan is double hulled, essentially a building within a building - complete with a redundant roof. A highly secure and controlled environment featuring on site 24 hour, 365 days a year operations and resilient power systems backed by APC UPS's, generator, air conditioning, and comprehensive physical security.

The CONTRACTOR shall provide, at ACD, 3 secured racks in a hot-cold aisle configuration. CONTRACTOR has utilized this data center for providing services for the Bureau since 2005. Security cameras are placed throughout the facility, including one camera operated by CONTRACTOR, which gives a full 180-degree view in front of the rack area. This camera is accessible remotely and sends pictures to CONTRACTOR technicians whenever there is activity sensed near the server racks.

**CONTRACTOR Site#2:** Savvis Washington, DC metro data center, located in Sterling, Virginia, offers over 268,000 ft<sup>2</sup> of total premier data center space designed to meet the stringent demands of Enterprise customers. Savvis provides a full suite of hosting services to enterprise customers from simple Colocation to fully Managed IT Infrastructure Hosting.

The CONTRACTOR shall provide secondary site equipment consists of nearly 2 full racks in a locked cage. CONTRACTOR has utilized this data center as a secondary site for BOE since 2002. Each of the two aisles approaching the cage is monitored by a Savvis camera. In order to get into the facility one needs to pass through a card accessed front door, enter a turnstile via access card and then within the turnstile is a biometric hand scanner for access into the data center. The turnstile is weight sensing to prevent tailgating. Card access is required to exit the datacenter so there is a record of both entrance and exit times.

#### Testing and Development

All testing and development operations are performed on hardware that is separate from any production equipment. Please refer to the hardware configuration diagram.

Since CONTRACTOR is not migrating from the current operating environment at CONTRACTOR's data centers, there will not be a test plan for the implementation of the hardware.

#### Technical Event Reporting Process

Contractor technicians are notified of technical events in a number of ways. CONTRACTOR's site-specific system monitors will alert on connectivity and network router issues by sending out SMS text messages. In addition, all servers at Sites #1 and #2 are monitored by instances of a Big Brother network monitor. This system will send SMS text messages and emails to techs in the field for more specific system problems such as a database down or server down scenario.



CONTRACTOR will report various system findings and results on system performance and recommended improvements to the State CA for further discussion. Based on the results, Contractor may provide efficiency recommendations concerning the BOE applications, to tune the data center resources for maximum cost effectiveness. This process is performed in coordination with the new technology review procedures.

#### Application Software and Production Support

The Contractor's Technologies Application Software and Production Support Plan (CONTRACTOR APSP) compiles the approved processes and procedures that the BOE and CONTRACTOR will jointly follow to maintain, manage and support the Bureau of Election (BOE) system applications and production environment. The CONTRACTOR APSP plan explicitly addresses the following objectives:

- Defines the scope of CONTRACTOR's role and responsibilities for the duration of the project;
- Describe job request processing and workload scheduling procedures;
- Detail the service level tracking and management reporting methodology for the project;
- Outline technology review and refreshment monitoring strategies; and
- Identify all data access, data storage, data security, and system performance monitoring processes that will be deployed by the Contractor to ensure compliance with the BOE's growing needs.

#### Processing Capacity

Per the requested capacity planning process outlined later in this section, processing capacity is always kept one step ahead of processing necessity. We monitor CPU cycles during peak processing times to ensure that each server is performing its delegated tasks at peak efficiency. CONTRACTOR's current environment can support the requested capacity and CONTRACTOR will evaluate the system capacity each year as part of the technology planning process for the program.

#### Description of BOE's Data Center Resources

A number of resources contribute to the successful operation of the outsource data center for BOE. These resources include the following:

#### System security support – 24x7 physical security and physical monitoring of resources

System monitoring - NIC system administration staff as well as data center host staff support monitoring of the network and devices dedicated to BOE performance and operations

- System technicians – Technical support from CONTRACTOR staff will be needed for the acquisition, installation, configuration, and testing of BOE hardware and software for servers and network devices. Ongoing support will be provided for upgrades and maintenance.
- Operations Support - Day-to-day and exception operations will be provided by operations support staff.
- Project Manager - The project manager will coordinate, manage, and direct ongoing data center actions.
- Backend/Frontend developers – programming will be needed to establish automated and recurring system management activities and to tune front end system activities for the new environment
- DBA – A DBA will be used to support BOE data center operations including design, data conversion and for ongoing operations. Additional tasks of performance tuning, and efficiency monitoring are provided by the assigned DBA.

In addition extensive systems and monitoring capabilities are deployed in support of BOE Operations. Physical support includes 24x7 provision of:

- HVAC and temperature control
- Conditioned Power
- Backup generation facilities and extensive battery backup and cutover power management.
- Secure identification systems and physical security barriers to secure the operation.

#### Computer Operations Services

CONTRACTOR provides server capacity and connectivity bandwidth to support:



- Web Hosting Services and Associated Peripheral Equipment - The WEB hosting server will provide connectivity to public queries for Homepage access and associated Web transactions including electronic filing, and public disclosure data queries.
- Networking to BOE Facilities - Both dedicated and Internet connectivity will be provided to BOE for access to the BOE Data Center. Dedicated connections will be through an MPLS connection, and Internet access through burstable bandwidth connections to the internet.
- Public Help Desk and BOE Staff Help Desk - Technical and software support will be provided by our NIC national help desk. The technical support staff will be trained in all aspects of desktop, filer and server software. If the question is more complex than can be handled by our normal FAQ and technical support protocols, the technical support staff will escalate the issue to appropriate specialists for response.
- Systems Software for processing all of BOE's current and future computer, and applications software needs. The operating systems, network environment, and hardware will be selected and designed with scalability in mind. The software will support expanded capacity volumes, and advanced processing such as clustering.

#### Scheduling & Production Procedures

BOE will retain control over work and job scheduling as this scheduling relates to the BOE's core business. CONTRACTOR shall manage the work and job scheduling for maintaining the network facilities, hardware infrastructure, application environments, financial tracking, customer support, and documentation requirements of the MECCA project. The CONTRACTOR development lifecycle provides a description of how job and work scheduling will be managed.

This lifecycle is founded on three concepts:

1. Leverage a team of managers (and contract administrators) to approve advancement of projects into subsequent phases of development, with State inclusion on this team.
2. Use cross-functional core teams to integrate multidisciplinary viewpoints into software development or enhancement and to assign cradle-to-grave ownership and delivery responsibilities to a project.
3. Develop software or enhancements in a phased approach that includes "gates" and gate reviews/sign-off checkpoints throughout the cycle for continual quality assurance.

This project management process allows CONTRACTOR to control the quality of our work and effectively integrate the BOE into all major areas of the decision-making process (including technology change management, feature validation / verification, and risk management). Where appropriate and beneficial, CONTRACTOR will work with the State to interface this process with those legacy vendors or sister agency teams currently engaged to facilitate efficient management and implementation of co-developed projects. Other benefits of our development process are:

#### Better management visibility into and control over project pipeline

- Reduction in overall development time (concept to production) by providing clear organizational direction and focus, and reducing re-definition and re-work
- Improved cross-project integration
- Facilitated technology planning and integration
- Increased accuracy and predictability of delivery timeframe and cost estimates
- Improved design quality
- Reduced development costs.

CONTRACTOR uses an escalated procedure for problem monitoring and resolution. Summarily, the Contractor first attempts to address the problem using internal means prior to alerting the state of issues. Significant issues will be escalated by the Contractor. Significant issues are those which may have a material effect on the project. Issues would be considered significant when they:

- Are of potential public interest
- Have an impact on service delivery



- Have major financial or policy implications
- Require a government decision
- Identify risk exposure

The Contractor's escalation procedures are a two-tiered approach:

1. Level 1: A problem is identified by a key manager, and is reported to the Project Manager; the PM remedies the problem and/or draws on lessons learned from similar problems in our other state portals (contacts CONTRACTOR's other PMs).
2. Level 2: If the PM cannot remedy the problem, the PM works with CONTRACTOR's President to resolve it.

For a given project, CONTRACTOR's project plan, project team and management plans are finalized into a document which defines and maintains the procedures for scheduling work and for ensuring that this work remains on schedule during unforeseeable circumstances.

#### Procedure Establishment Process

Through the duration of the contract, it may become necessary to create new and or modify existing work procedures and processes. To initiate a revision by either the BOE or CONTRACTOR, the requestor will first notify either the State CA and/or CONTRACTOR PM of the request. The State CA and CONTRACTOR PM mutually agree upon a time to review the request and will determine if a change or creation of a new request is needed on a case-by-case basis. The State CA and CONTRACTOR PM will evaluate if an existing process is appropriate to manage a requested task, if the existing process requires modification or if a new procedure needs to be created and implemented.

#### Modification of an Existing Process/Procedure (P/P)

Upon discovery that an existing P/P is not able to handle a requested task without revision, the CONTRACTOR PM is responsible for creating a draft version of the modified P/P and for communicating with and presenting this draft to the State CA for approval. Prior to implementation both the CONTRACTOR PM and State CA must provide written sign-off of the new revised P/P. Following revision approval the CONTRACTOR PM is also responsible for following QA Plan standards which include updating all projects P/P references, documentation content and document revision histories.

#### New Process/Procedure Creation

In the event that no existing P/P can be identified to manage an in scope job request, then the STATE CA and CONTRACTOR PM will jointly identify new requirements for the P/P and create an initial draft. Prior to implementation both the CONTRACTOR PM and State CA must provide written sign-off of the new P/P. Following final approval the CONTRACTOR PM is responsible for following QA Plan standards which include updating all projects P/P references, documentation content and document revision histories. At this time, the new P/P will become and an official component of the project standards and procedures.

#### Ad Hoc and Emergency Procedure Overview

CONTRACTOR understands that BOE is concerned about undue "delay" which a Bidder's operational procedures may impose on BOE to support critical situations in which information must be processed or reports provided on an emergency and/or ad hoc basis. We understand that the sources of these requests are often due to management initiatives or queries, legal requirements, or other reasons for time sensitive response.

CONTRACTOR will work with BOE to address this category of work in an expeditious manner to meet the service needs.

Over time we will support enhancements that provide increased access and reporting capabilities to BOE selected staff. The goal will be to permit ad hoc query and report generation in increasingly user effective ways. Our goal will be to emancipate the data resource to enable analysis and responsive data presentation, and to remove ourselves from the bottleneck to the flow of information.



Our procedural approach in the past has focused on the following parameters:

- Knowledge of system cycles and informational capacities – by helping our clients be clear on the nature, extent, limitations and constraints of the system, we build a framework of realistic expectations on timelines for ad hoc and emergency requests
- Immediate response and prioritization - Special requests are taken seriously. We want to support these requests more, because they often lead to successful outcomes for our clients. And our success is based on our client's success. With the resources available, there may be service level impacts. We would inform BOE of the impacts, and provide the impact and alternatives and work with BOE to prioritize task or development work to support the ad hoc or emergency request, in a manner that is responsive to BOE needs. We are used to a collegial and professional consulting relationship, where we cooperate in service level tradeoffs that maximize meeting BOE's overall needs.
- Long-term benefits from short-term imperatives – we will evaluate each ad hoc and emergency request, and work with BOE to determine whether the solution that delivers on the immediate need can result in improved capability that will make meeting that need easier in the future. The goal would be to continuously expand ease of data access and scope of solutions to enhance BOE's future operations.
- Description of the Data Storage Management Approach
- The data storage design provides a centralized location for storing all production data within a site. This centralized storage makes it easier to manage, backup and recovery data, share data as well as 'hot swap' components across servers.

The database infrastructures are designed and indexed for maximum efficiency. Image and file system data is maintained on an Oracle ZFS disk storage array. NetApp filers supporting RAID are used for archival backups. Database data is maintained on Oracle/SUN disks supporting mirroring and striping, as RAID is not the most efficient method of assuring database data redundancy.

All databases and file systems are backed up nightly via Informix Ontape and Ufsback file system backup software, respectively, to ensure the ability to recover quickly and completely from any disaster. Backup copies are maintained at both the primary data center (Site One) and at the secondary, fail-over site (Site Two).

The data storage management plan has selected Network Appliance (NetApp) as one provider of an NFS dedicated machine to provide file system services for backup/recovery data. The NetApp filer storage appliances, known as filers, are proven, highly available solution (>99.99% data availability) for consolidating data and simplifying data management. When implemented with a paired fail over filer this solution is very stable. The NetApp filer had built-in RAID controllers, redundant hardware components, and hot spare disk drives. This all adds to the high availability.

One advantage of the NetApp filer is that it is a multi-protocol filer. This means that PC's store and access data side-by-side with UNIX-based clients, without compromising their respective file attributes, security models, or performance. Users with PC desktops can work within the single instances of their home or project directories, with Windows-based applications executing locally, or UNIX-based applications running on a server. And whether written to the filer via NFS or CIFS, documents can be accessed directly by a wide variety of Web browsers via HTTP.

In addition, the Oracle/Sun ZFS server, a new generation of multi-protocol NAS server, offers dramatically lower storage footprint and complexity. It has built-in inline de-duplication and compression to save on space and cost in storage consolidation in long term. It comes with a high-availability clustering option to protect against downtime.

Together, these file system solutions provide lasting confidence that CONTRACTOR can continue to provide competent data storage management on behalf of the BOE for many years to come.

#### Description of the Backup, Recovery, and Retention Approach

Two-tier nightly backups of the databases are performed. One tier is comprised of a binary or disk-level backup of the entire database instance to a standby file system. Tier two consists of a per-table data export. Tier one is used to recover in a disaster recovery scenario, while tier two makes a more granular recovery available upon request.



Server file systems are backed up to a standby backup NetApp file system server on a nightly basis.

Oracle/Sun servers can be quickly recovered after hardware replacement by using a program called Jumpstart. When a machine was failed and needs to have the OS reloaded or a new machine is being installed Jumpstart simplifies the process of loading the OS. In addition Jumpstart can be setup to customize each install according to the tasks of the machine, the size of the disks, and the type of machine

For ultimate disaster recovery, if Site#1 in Lansing is offline for an extended period, database, and file system data are also synchronized to a Site#2 datacenter located in Virginia on a near real-time basis.

CONTRACTOR has deployed the Primera Disk Publisher 4101 Blu-Ray system as the data archiving solution for the BOE. By using Blu-Ray Dual Layer media having 50GB capacity each, the entire BOE dataset is burned onto a small set of discs that can be easily transported and preserved. Contents of the file system backups are moved to Blu-Ray Disc media on a quarterly basis and stored offsite at the BOE office.

Live system data is retained indefinitely. No data is "purged" from the system. Per the Michigan Campaign Finance Act, Section 169.216(4), CFR datasets must be retained for at least 15 years from the time they are stored.

#### Description of the File Synchronization Plan

The file synchronization plan being implemented on the current system is classified as the full synchronization method. This means there will be at least two distinct copies of all files and database partitions. This approach takes resources from applications but provides the best protection against faults and provides the quickest recovery methods. In most cases a seamless fail-over can be executed.

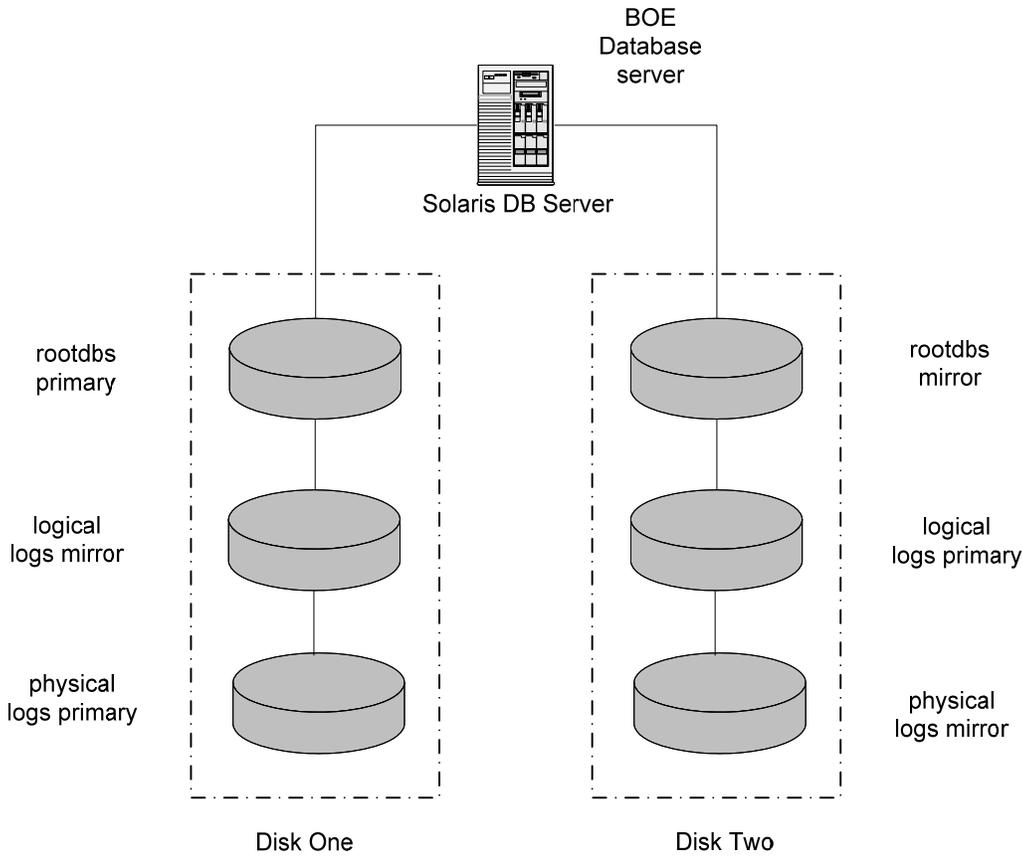
For the current system, file synchronization is addressed in two different methods. There is one approach for databases and one for file systems. Any other data on the system is not deemed critical enough to be duplicated. This does not mean it is not important enough to be backed up and restorable.

Files are synchronized between Site#1 and Site#2 on a regular basis based on their relative importance. Scanned document images, for instance, are transferred every 5-10 minutes as loads allow. Database logs transfer every 5 minutes. Still other less important files can be transferred nightly, such as non-critical software storage.

#### Database Replication

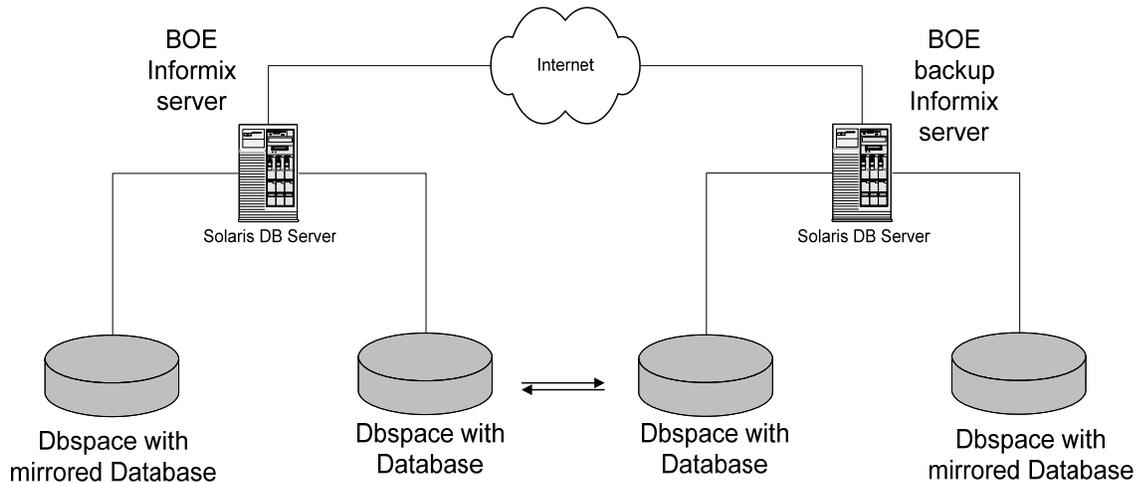
The design and layout of the Informix database sets up the underlying file synchronization for all Informix data. Each instance of Informix will use mirroring to create the rootdbs dbspace, the physical log dbspace, and the logical log dbspaces. These dbspaces contain all the buffers, pointers, and transaction logs necessary to do query, update, commit, and rollback operations on a database. Once setup Informix will write to both partitions of each dbspace at the same time. For best fault tolerance these dbspaces are created on different disk drives.

The diagram below shows a typical layout of these dbspaces on a set of disk drives.



The dbspaces, where databases are stored, are protected with a 2-way replication scheme to an instance of Informix at an off-site location. The two-way replication is setup when a database is created in Informix. A second Informix instance is assigned to be the replicate and this machine can be anywhere that is accessible. At every checkpoint the logs files are transmitted to the replicate and committed to the database there. A typical time between checkpoints is five minutes but this is configurable.

The diagram below is a typical installation with a replicated database.



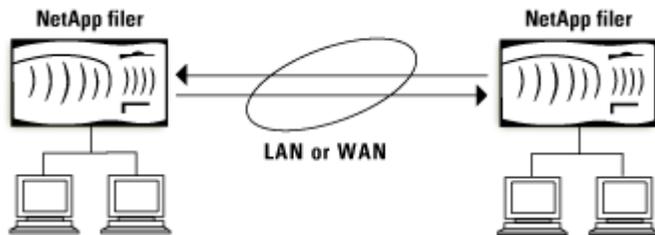
The data is further protected from disk failures through the use of a RAID disk system. This RAID disk system's protection is independent to the operation of Informix. A side benefit is an increase in disk I/O since the data is spread over multiple disks. If RAID is not possible then the dbspaces that contain databases will be mirrored.



**Defined:** A full synchronization is nothing more than a complete disk-to-disk copy. It is used when the target volume is in an unknown state. A newly formatted volume, for example, must undergo full synchronization before becoming a useful remote copy member. The same is true when there is uncertainty in the contents of the target volumes. “Full resynchs” are clearly the most time-consuming resynchronization.

### System Replication

File systems can be replicated at remote sites for disaster recovery, for local read-only access and to provide efficient, centralized backup with no downtime. This approach is being used in the current design and is shown in the diagram below.



NetApp filers have a portfolio of software for management and monitoring. On the management side is the Snapshot feature, a unique function of the Data ONTAP software, which stores up to 31 read-only versions of a file system. Administrators can perform online backups using the Snapshot feature with minimal disk space, and end users can recover lost or deleted files online, without assistance or recovery from tape.

**Disaster recovery:** If there's a failure or problem at the source site, mission-critical data can be accessed from a mirror at a remote site to ensure continued operations.

**Data replication for read-only access:** Set up a mirrored site at a remote location to provide local, read-only access to a set of users. This is particularly useful for certain volumes of data that are frequently accessed across the enterprise. Data is accessible to users with fewer delays.

**Isolate testing to non-production volumes:** Create a dedicated mirror site, which is read-only, to perform testing—application testing, Web site testing or evaluating new software, for example—without impacting production volumes or interrupting business and online services.

Description of the differences between MDOS and Contractor's backup/restoration procedures

MDOS plays no functional role in the CONTRACTOR backup/restoration procedure at Site#1 or Site#2.

Description of any BOE specific procedures

The State receives quarterly backup media from CONTRACTOR technicians and stores this media in the BOE office.

System and Application Documentation Standards

CONTRACTOR will follow our standard documentation process and standards for creating all infrastructure and data center documentation. Please refer to Section C. Development for an outline of CONTRACTOR System and Application Documentation Standards.

Listing of Application Development Resources

CONTRACTOR will use the following tools and technologies to development solutions for MECCA.

- Interactive debugging tools
- Microsoft Visual Studio 2010
- File/database handlers
- Microsoft SharePoint
- Microsoft Access
- Informix



- File/data compression tools
- Zip
- TAR, gTAR
- compress
- Report generators and prototyping tools
- Microsoft Access
- JasperReports
- Balsamiq
- Program dump analyzers
- Microsoft Visual Studio 2010
- Solaris gdb
- Optimizing compilers, program analyzers
- Microsoft Visual Studio 2010
- Eclipse
- Apple Xcode (Mobile Applications)
- Project management and estimating tools
- Microsoft Project/PMI PMBOK Estimating methods mostly PERT and Historic Information incl. Work Breakdown Structure from previous projects.
- Cooperative processing software and tools
- Microsoft Visual Studio 2010
- Program version control software
- CVS (Concurrent Version System)
- TortoiseCVS
- Security-related software
- Acunetix Web Vulnerability Scanner (WVS)

#### Description of the Capacity Planning Process

CONTRACTOR uses automated system-monitoring tools in its data centers. Some of these are managed by CONTRACTOR for a national view of server status and performance such as Big Brother. Others tools are part of the individual data centers. Finally, server/device specific management tools monitor performance and status of individual systems, and can be remotely monitored or reviewed. CONTRACTOR System Administration staff provide day-by-day monitoring of the data and information presented by the automated systems. They evaluate results to identify and correct technical configuration problems or bottlenecks and to provide periodic configuration and capacity modifications to assure effective performance.

A key focus of this monitoring is CPU and disk utilization. Big Brother, for example, constantly interrogates the CPU and disk usage status. Administrators set flag points for normal (green), warning(yellow) and problem alert (red) status. A 90% utilization for a given disk can be set as an alert point. When that disk on that server reaches 90% utilization, emails and SMS text messages are sent to alert the administrator to review system status. This happens on a 24x7 basis. The project director and top management access the system and can review the status at any time. Our clients can also have access for their specific servers and devices.

CONTRACTOR will work with the State CA and PM annually to accurately forecast future capacity requirements. We will continue the principles we have developed to maintain effective capacity, and provide access to review and track key performance monitoring tools and to all data required to support usage statistics.

Performance reports that are typically provided to clients include:

- CPU utilization
- Disk utilization
- Network bandwidth utilization
- Transaction processing statistics



CONTRACTOR will work with BOE to identify other reports of interest and set reporting timeframes. CONTRACTOR will also review BOE-provided similar historic performance measures to develop a constant measure over time. The timeframes and detail levels for reports, and report frequency will be determined by the innate reporting capacity of the monitoring systems and by agreement with BOE.

#### Configuration Management Plan

With projects involving dynamic user requirements and the potential for frequent hardware/software upgrades, configuration management is essential to maintain version control. Version control/audit capability is necessary to review a deployment, support disaster-recovery, or facilitate a rollback to a previous version of an object.

CONTRACTOR's configuration methodology is structured to maintain versions of deliverables throughout a project life cycle. In addition, the methodology includes a knowledge transfer component to allow the support team to maintain the system during the post-production phase. Our methodology identifies several roles for the Project Manager:

1. Ensures the Configuration Management Plan is maintained and continues to satisfy the needs of the organization.
2. Appoints a resource to perform the role of Configuration Management (CM) Librarian in order to provide a configuration library for the portal.
3. The CM Librarian sets up and maintains the configuration library.
4. The CM Librarian creates any documentation required in order to support and maintain the configuration library.
5. The CM Librarian ensures that all documentation, code, and commonly used software tools and development environments are deposited into the configuration library.

Quality Control consists of extensive reviews of documents as well as complete auditable system and acceptance testing of the delivered systems. This will give the portal the ability to successfully produce any build, release, document, or other piece a material that may be required to maintain, modify, install or remove a system component.

CONTRACTOR uses standard tools to track hardware and software inventories installed, as well as the combination of hardware and software (including software version) comprising each piece of equipment. Our configuration management system update procedures will make sure that all information about the project is logged and stored by the Configuration Librarian. Assets such as the following items will be archived when they enter one of the following states (new, altered, release, build, beta, alpha, final) and the person archiving and the person authorizing will be documented:

- Requirements documents
- Statements of Work
- Design documents
- Database schematics
- Application Interface specifications
- Source code
- Object versions
- Change requests
- Change request results
- Builds
- Releases
- Documentation
- All portal plans and models
- Maintenance and support needs
- All miscellaneous project documentation



This system will be integrated with the change management and help desk procedures. The State may present items to include in the system to the configuration management librarian for archival. These items may include documents such as database layouts, application programming interfaces and other information that explains the agencies work flow and legacy applications and interfaces.

#### Facilities location

##### Site #1:

ACD.net

1800 N Grand River Ave  
Lansing, MI 48906-3905

##### Site #2:

Savvis

45845 Nokes Blvd  
Sterling, VA 20166

#### Description of the Data Center Standards and Practices

Generally speaking, the same ITIL-sanctioned methods CONTRACTOR commonly applies to projects are also applicable and extend logically to our datacenter operation standards and practices. These are outlined in detail in Section 1.4 of this document and include:

- Issue Management
- Risk Management
- Change Management

NIC Technologies' data center practices and standards are further embodied in a comprehensive security auditing website. The standards are validated by a third-party security provider, Verizon security. These standards are broken out into areas that cover data center security including physical and operational and network standards. There is an ongoing scanning of these policies from a third party security provider aforementioned, on a quarterly basis. We have annual and ongoing audits of these practices, procedures and policies. CONTRACTOR will provide review and access of these standards and the current audit status upon request.

Services made available by CONTRACTOR's partnership with Verizon Security include but are not limited to:

- Application Security Reviews
- Application Vulnerability Assessments
- Network Vulnerability Assessments
- Penetration Testing
- VoIP Assessments
- Wireless Assessments

#### Description of the Technology Deployment Requirements

##### Description of Reliability Methods and Security Procedures

NIC Technologies works with the BOE to update the overall security policy, which directly iterates into specific network, firewall, and access security configurations. This analysis process continues through four phases:

- An abstract model comprising policies, functions, principles, framework, and associated concepts for achieving security services capabilities.
- A set of components and logical structures, allowable standards, and identified security contexts, relationships, and associations.
- A logical model utilizing these specific components and selected structures with allocated functions, defined interfaces, and selected standards.



- A system specific model comprising the component configurations which support and enforce the overall security policies and architecture.
- Equipment Redundancy
- A critical element in the design of reliable, fault-tolerant computer systems is the inclusion of redundant hardware at the design phase. CONTRACTOR has designed the BOE system with this in mind. Clustered, load-balanced web servers are used to allow the BOE system to effectively “burst” during times of high activity, such as election night or the many scheduled CFR filing periods throughout the year.

Further, critical hardware, such as load balancers and file system heads, is duplicated and stands ready in the case of a fail-over situation.

#### Firewall

NIC Technologies has designed the BOE security infrastructure using a combination of hardware devices (data center screening devices), specialized application servers (firewalls and intrusion detection systems), along with “hardening” the default configurations of servers to meet a number of goals in which the system will operate.

Our goals include:

- Protection against intentional or accidental attempts to alter data in an unauthorized manner while in storage, during processing, or while in transit, and to ensure the system performs its intended function in an unimpaired manner.
- Protection against intentional or accidental attempts to perform unauthorized reads covering data in storage, during processing, and while in transit.
- Protection against intentional or accidental attempts to perform unauthorized deletion of data, or cause a denial of service or data accessibility.
- Accountability: actions of an entity may be traced uniquely to that entity. This provides non-repudiation, deterrence, fault isolation, intrusion detection and prevention, and after-action recovery and legal action.
- Assurance, grounds for confidence that the other four security goals (integrity, availability, confidentiality, and accountability) have been met by our implementation.

To meet these goals, the NIC Technologies design for the BOE system uses firewall appliances and intrusion-detection capabilities to provide multiple points of inspection, filter, approval, and denial of network traffic that is entering or exiting the site. NIC Technologies has successfully used this combination of two dissimilar security devices to strengthen a site’s security perimeter against penetration attempts and denial of service attacks in existing websites. If vulnerabilities against one family of devices become known in the hacker community, the other system’s dissimilarity allows it to continue to provide protection as the second device will rarely share a common hardware platform or operating system vulnerability.

The firewall system is placed between the web site and all Internet and non-internal connections and controls access to the different network segments.

The network segments that connect to the BOE network will also be under the intrusion detection and monitoring system that will maintain a continuous activity log. This detection system will monitor network traffic and compare activity with host log entries to known and likely methods of attackers. Suspicious activities will trigger administrator alarms and other responses such as SMS alerts or email messages.

#### Application Security Scanning

NIC Technologies, as part of its regular and ongoing security-centric approach, has adopted and utilizes the Acunetix Web Vulnerability Scanner product. CONTRACTOR incorporates this product into the software development life-cycle to scan for application-specific vulnerabilities. Since ports like 80, 443, and other application ports must always be open, we add this extra layer of protection during the application development and deployment stages to keep the data and servers of BOE’s critical systems secure.



Before new applications can be deployed to a production system, CONTRACTOR runs comprehensive scans on them with the Acunetix WVS tool. Any problems found, such as SQL Injection or Cross Site Scripting (XSS) vulnerabilities are alerted and detailed in a number of different report styles tailored to the needs of the developer or project manager.

In addition, established CONTRACTOR processes include regular quarterly re-scans of all BOE production applications; in the event that new vulnerabilities are discovered after applications are initially deployed.

Acunetix Web Vulnerability Scanner includes many innovative features:

- Innovative AcuSensor Technology that allows accurate scanning with low false positives, by combining black box scanning techniques with feedback from its sensors placed inside the source code.
- An automatic JavaScript analyzer allowing for security testing of Ajax and Web 2.0 applications.
- Industry's most advanced and in-depth SQL injection and Cross site scripting testing.
- Visual macro recorder makes testing web forms and password protected areas easy.
- Multi-threaded and lightning fast scanner able to crawl hundreds of thousands of pages without interruptions.
- Acunetix WVS understands complex web technologies such as SOAP, XML, AJAX and JSON.

More information on this product can be found at <http://www.acunetix.com>

#### Definition of a Declared Disaster

CONTRACTOR defines a disaster as any unplanned, extended loss of critical business applications due to lack of computer processing capabilities for more than a 24-hour period.

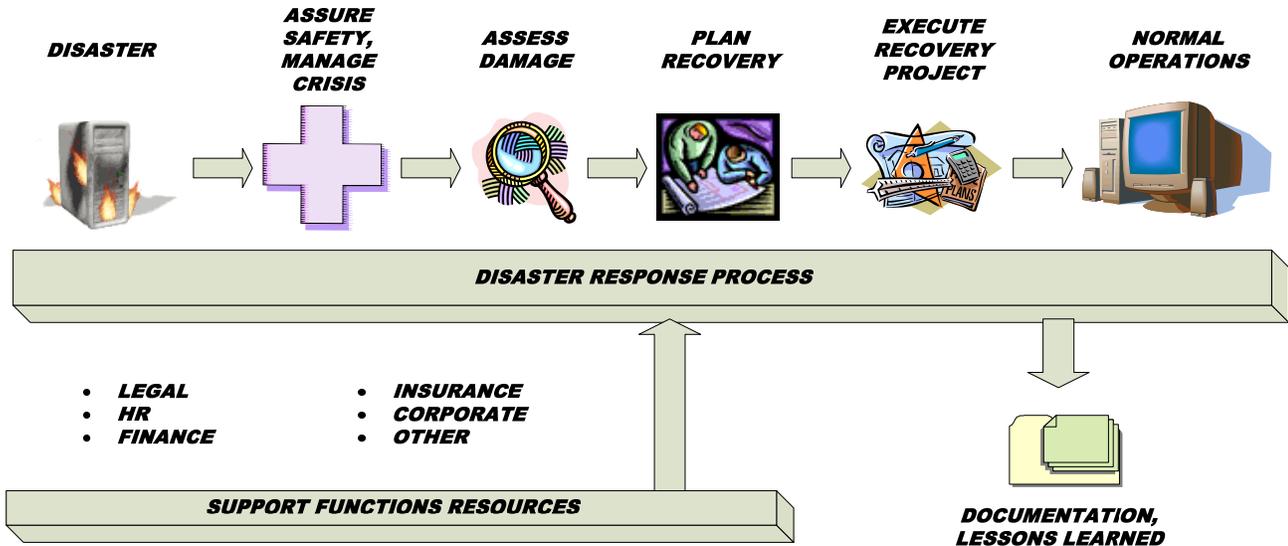
#### Description of Disaster Recovery Services

Planning for business continuity of the BOE Back office and website in the aftermath of a disaster is a complex task. Preparation for, response to, and recovery from a disaster affecting the overall functions of the business require a cooperative effort from many parties.

This Disaster Recovery Plan has been created to anticipate, prepare for, and deal with possible disaster scenarios. It has six major objectives:

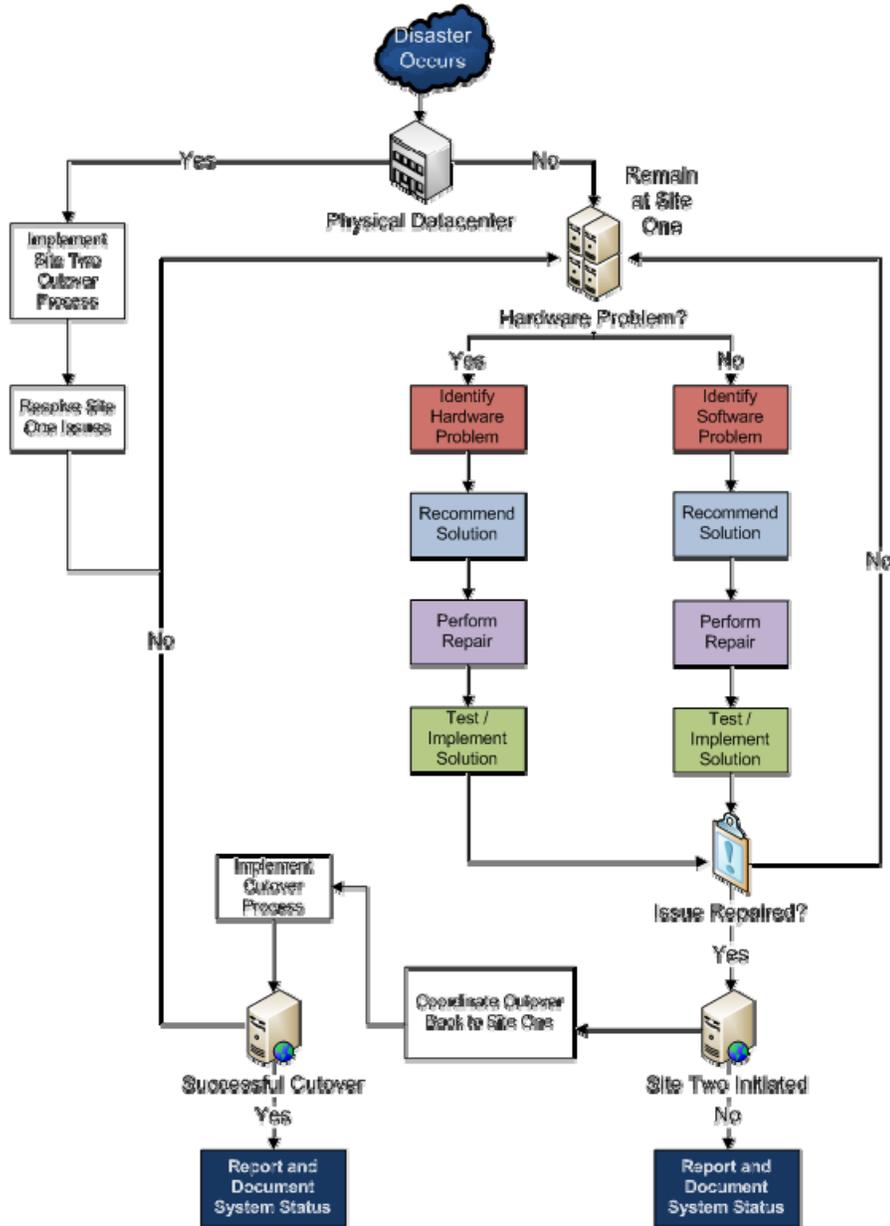
- Establish and define responsibilities
- Define procedures for recovery of operation
- Define mission critical systems
- Limit magnitude of loss
- Minimize extent of interruption
- Define alternatives for continuation of services

The following diagram depicts the overall CONTRACTOR approach to handling and recovering from disasters:



When the situation is stabilized and it is safe to operate, the normal continuity and cutover processes will have executed, or will be executed to maintain customer service. However, the current emergency needs to be managed, and an initial assessment of the incident carried out. To do this, a rapid review and decision process will be needed. This should be done as soon as feasible after the situation is stabilized. The following chart depicts the steps of this phase.

A flow of the established CONTRACTOR/BOE disaster recovery process is shown below. CONTRACTOR's existing Disaster Recovery Plan and Business Continuity documents further outline our established procedures for reacting to declared disaster situations.



**Description of the Service Level Management**

- CONTRACTOR is dedicated to the proactive monitoring and resolution of the systems it supports on behalf of the Bureau.
- CONTRACTOR will provide a mix of technology and support processes to measure, evaluate and continually approve the performance of the MECCA systems.
- CONTRACTOR will track system and network performance and report any issues to CONTRACTOR staff. Email and SMS alerts will be used to define metrics that exceed standard and established service thresholds. The proposed solutions will allow CONTRACTOR to continuously monitor the health of MECCA systems, and record system health status changes. Please see Section L. Software License, Maintenance and Support for our Service Level Management plan.

**Server Refresh Schedule**

CONTRACTOR is proposing a 36-month refresh schedule for BOE equipment, and an annual evaluation of all assets and their current usable lifetime to update our technology refresh planning and implementation schedules.

**Contractor Responsibilities**

- Vendor will support environments as detailed in contract
- Vendor will be responsible for systems operation
- Vendor will follow defined procedures for any environment changes

**State Responsibilities**

- Review and approve changes to environments

**Deliverable(s)**

- Data center standards (due 60 days from start of contract)
- BOE Disaster Recovery Plan (due 30 days from start of contract)

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**L. Software License, Maintenance and Support**

Maintenance and support as discussed in this section include the Bureau network, website and hardware systems that are needed by staff to perform their daily functions and meet statutory obligations, are needed by filers to meet their statutory obligations to file electronically and the public's ability to access the data and query look-ups via the web. See the section titled Application Software (Current Applications) for a detailed list of applications covered by this section.

**SERVICE LEVEL REQUIREMENTS**

The critical nature of the Bureau applications requires a system of high reliability, availability, and performance. The users and taxpayers expect this system to respond in the needed timeframe and with accuracy each time it is invoked. The Contractor is expected to work with the State in a spirit of cooperative harmony to ensure that the established standards of reliability, availability, and performance are maintained.

A decision to outsource the Bureau's processing facilities and services represents a certain level of risk from which the Bureau must protect itself. Therefore, to provide the necessary protection, the Bureau requires the establishment of an agreement of service levels to be provided by the Contractor. The agreed upon service levels are to be monitored and measured periodically. The detailed service level data from the measurement and monitoring effort are to be processed and summarized into clear and concise management reports that are consistent with and accurately support an assessment of the degree of compliance for each guaranteed service level.

Generally, all service level monitoring, measurement, and reporting will be conducted by Contractor personnel and validated and verified by the Bureau or a designated representative.

Service level reporting is to be done periodically, consistent with the priority and importance of the measured or monitored item in accordance with the published service level requirements.

**Response Times**

Response times are essential for the Bureau because long delays in system response result in inefficiency and low productivity for employees and results in poor service to the customers. The goal of the Bureau is to deliver a transaction response time of no more than five (5) seconds on average for all, or at least 98% of the transactions. The five (5) second objective is based on a three (3) second objective for internal CPU processing, and a two (2) second objective for delivery through the network (dedicated data line) to the Bureau staff.

Transaction response time is defined here as the elapsed time from the moment the Bureau staff transmits a message to the moment the respondent message is received on the Bureau staff's PC.



The Bureau recognizes there cannot be any guarantees of transmission times when using the Internet as the communications transport. The Bureau will allow for different response times for the customers using the Internet to access the Bureau data. The goal of the Bureau is to deliver a transaction response time of no more than three (3) seconds on average for all, or at least 98% of the transactions. The three (3) second time objective is based on internal CPU processing.

For those customers (non-Bureau staff) accessing the Bureau data via the Internet, transaction response time is defined as the elapsed time from the moment the web servers receive a request to the moment the respondent message is sent to the Internet for delivery.

### **Normal Availability Summary**

- Bureau production is 7 a.m. - 7 p.m. Monday through Friday.
- Batch filling processing 24 hours/day Monday through Sunday.
- All times are displayed as local Lansing, Michigan time.
- Contractor must commit to the above listed normal availability summary. In addition, Contractor's scheduling process must be flexible enough to allow for pre-planned schedule changes and emergency availability requests.
- While the Bureau generally does not provide processing availability for its staff on official State of Michigan holidays, workload variations may require availability on holidays.
- Batch filing processing must be permitted during production online hours without degradation to the response time detailed in the Work Statement.

The Contractor will conform to the service level requirements detailed below.

### **MECCA Service Level Agreement**

#### **Failure to Conform to Response Times**

If the Contractor is unable to conform to the service levels defined, the Contractor will (in coordination with the Bureau) continue to make every reasonable effort to bring the applications back to within agreed metrics. If the Contractor misses the application availability, the Bureau may evaluate the Contractor's performance and determine whether the additional time required to bring the applications back within agreed to metrics results in any of the following: 1) a significant financial loss for the State, 2) a violation of legal statutes and agency mandates, 3) work stoppage, 4) data corruption, or 5) other potentially adverse issues that the Bureau deems critical to the Bureau functionality.

In the event that the Bureau's services are adversely impacted by the Contractor's failure to meet the application availability, the Bureau may require that a calculated amount of project effort be added to the Bureau's existing MECCA bank of hours balance set out in the Contract. The maximum amount of project effort that may be added to the MECCA bank of hours is progressive and increases as the amount of time the state's services are impacted increases. This methodology reflects the increased impact of such a failure, as more time is required for resolution.

The method for calculating the amount of effort that can be added to the bank of hours in response to a Contractor's failure (as defined in the paragraph above) will be left to the Bureau's discretion and will not exceed more than one hour added to the bank of hours for every hour of downtime that is experienced beyond the required Contractor response time. Project effort added via this method will be considered effective immediately.

#### **Excusable Failure**

Neither the Contractor nor the Bureau shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor), the failure of third parties, systems or processes outside of the control of the Contractor or Bureau (such as general



Internet/State network failure), injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of such party, provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans, subject to the economic constraints of the project.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and said party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided said party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

### ***Bureau Responsibility***

#### ***Service Level Support***

The Bureau bears a general responsibility to report errors that prevent the applications from operating within the mutually agreed to metrics to the Contractor in a timely manner and to provide information and support the Contractor's efforts to diagnose and correct such errors. The Bureau will use industry best practice efforts in providing the Contractor with information to diagnose the root cause of the error to recreate the original problem in a controlled diagnostic environment. The Contractor may require the Bureau to provide supervised access to a state system to enable the Contractor to gather additional diagnostic information.

Upon the Contractor discovery of a MECCA system emergency or Primary Production Site inoperability, the Bureau must respond with urgency to the Contractor's requests for information, verification of error correction and approval for migration of error corrections to the production environment.

The Contractor shall not be liable for any delays, failures or service outages that result from the State's failure to provide timely information, approvals or consents, content or other deliverables necessary to maintain the MECCA system at the mutually agreed to metrics. The Contractor's performance and response times set forth in the Service Level Agreement do not include service outages caused by the State of Michigan, by its networks, by its applications on servers, by problems associated with State servers, failure of Internet connectivity due to State network unavailability or by changes to State specifications or standards that may be incompatible with MECCA system requirements and are implemented without adequate, prior notice and coordination.

#### ***Harmful Code***

The Bureau represents and warrants to the Contractor that no data, information or content shall be knowingly transmitted by State employees containing any program, routine or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any 'time bomb,' virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door (collectively, Harmful Code).

#### ***Business Hours and Observed Holidays***

The Contractor working hours will be 8:00 AM to 5:00 PM Eastern Time, Monday to Friday, excluding statutory holidays for the State of Michigan (business hours). The Contractor shall adjust and work additional hours needed for any filing deadlines or Election days as requested by the Bureau. Unless required otherwise, the Contractor shall recognize all holidays observed by the State of Michigan with the exception of Election Day.

#### ***Confidentiality of Data and Information***

All financial, statistical, personnel, technical and other data and information relating to the Bureau's operation which are designated confidential by the Bureau and made available to the Contractor in order to carry out the Contract, or which become available to the Contractor in carrying out the Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Bureau.



If the methods and procedures employed by the Contractor for the protection of its own data and information are deemed by the Bureau to be adequate for the protection of the Bureau's confidential information, such methods and procedures may be used, with the written consent of the Bureau, to carry out the intent of this section.

The Contractor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the Bureau generally, or to the Contractor without restriction, (3) information independently developed or acquired by the Contractor without reliance in any way on otherwise protected information of the Bureau. Notwithstanding the foregoing restrictions, the Contractor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the Bureau has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

### Service Level Requirements

#### Response Times and Availability

CONTRACTOR will make every effort to maintain the State/BOE's Applications availability and response times at a level equal to or better than the general system performance metrics (Metrics) currently recorded in existing BOE SBS document (and documented in this RFP). This includes an Application availability of 99% (Availability) or greater during the Contract period. This Availability excludes mutually agreed upon downtime, incidents outside of the control of the Contractor, scheduled maintenance periods, and downtime caused by Excusable Failures or Harmful Code.

#### Delivery of Services

CONTRACTOR will be responsible for delivery of technical and support services for the Applications as described within the existing and State approved project documents: Quality Assurance Plan (QA), the Application & Production Support Process document (APSP) and the SBS (system response timing's) documentation. These previously mutually agreed to procedures comprehensively define the roles, responsibilities, performance metrics, deliverables, timelines and service levels that CONTRACTOR are responsible for maintaining throughout the duration of the Contract and match what is being requested in the MECCA contract. The State and CONTRACTOR PM's will revise these documents as needed for the new contract.

Each of these procedures is subject to periodic review and mutually agreed to process modifications are anticipated from time to time. In the event that a modification to any of the aforementioned procedures is approved and jointly implemented by the State and CONTRACTOR, then CONTRACTOR's responsibilities will also be adjusted to conform to these modifications.

#### System Uptime

CONTRACTOR is responsible for the operation and uptime of the Applications for the MECCA project. This includes the maintenance of a primary Michigan based production environment and a secondary, mirrored, and geographically dispersed fail-over production environment.

Upon CONTRACTOR discovery of an Application emergency or Site One inoperability, the CONTRACTOR Project Manager (PM) will continue to respond immediately using the processes outlined within the current APSP documentation. This response process includes the notification of the State Contract Administrator (CA) and State PM, a determination of problem, an evaluation of resolution priority by the State CA and PM and as necessary, the reallocation of project resources to immediately bring the Applications back to approved operating parameters.

In the event Application downtime is caused by a problem beyond CONTRACTOR's control, the CONTRACTOR PM will notify the State immediately and make every reasonable effort to notify the responsible parties and cooperate with them to provide a contingency plan, workaround, or permanent solution that restores operational status to the Applications as soon as possible.



Except where agreed upon otherwise by the State CA and PM, CONTRACTOR will make the following levels of performance available to the BOE:

Issue	Occurrence Period	Time to Restore
CONTRACTOR Network failure that impacts public access to BOE including E-filers	24x7	Less than 4 hour correction time
CONTRACTOR Network failure that impacts State Applications	State/BOE Business Hours	Less than 4 hour correction time  Less than 2 hour correction time if within 24 hours of a BOE CFR filing deadline day or a BOE Election day.
	State/BOE after hours	Less than 4 hour correction time OR up to one hour before start of next business day for BOE  Less than 2 hour correction time if within 24 hours of a BOE CFR filing deadline day or a BOE Election day.
CONTRACTOR Network failure that impacts public access to BOE including E-filers	24x7	Less than 4 hour correction time
CONTRACTOR hardware failure that impacts BOE Applications	State/BOE Business Hours	Less than 4 hour correction time  Less than 2 hour correction time if within 24 hours of a BOE CFR filing deadline day or a BOE Election day.
	State/BOE after hours	Less than 4 hour correction time OR up to one hour before start of next business day for BOE  Less than 2 hour correction time if within 24 hours of a BOE CFR filing deadline day or a BOE Election day.

**Limitations**

Scheduled Maintenance – CONTRACTOR will require scheduled maintenance time periods in order to maintain and upgrade the infrastructure and applications. Scheduled maintenance will typically occur after hours or during off-peak hours and will only be conducted following notification of and explicit consent from the State CA or PM. Service outages during such approved scheduled maintenance are not counted towards response time or Application Availability.

Site One Fail Over – In the event that a fail-over from Site One (primary) to Site Two (back-up) is required, CONTRACTOR staff will have an additional 2 hours to transition all Applications to the secondary off-site data center. The steps for this additional ‘fail-over’ effort are also outlined within the BOE’s APSP document.

Site Two Fail Back – Unless otherwise required, the transition of Applications from Site Two back to Site One will be handled in a manner similar to scheduled maintenance. Fail back efforts will require the explicit consent of the State CA or PM.

**Provided in Annual Software Licensing and Agreements**

CONTRACTOR proposes to comply through our approach detailed in our response to Article 2. It provides our approach for software licensing and agreements that parallels the licensing approach used in the previous ECASST contract.



### Service Level Management

The Service Level Management plan involves proactively monitoring all application production and support processes and ensuring that the system and project support components continue to operate at and above the performance levels established within the State approved technical design documentation and service level agreement.

The project management controls and review activities as described within the existing Quality Assurance Plan (Section 2.1) define the reporting vehicle that the State and CONTRACTOR PM jointly use to perform regular monitoring and review of contract service levels. These control and review activities also define how CONTRACTOR will handle the management and monitoring of emergency and unexpected work. BOE will have access to the Quality Assurance Plan.

### Contractors understanding of the Service Level Requirements

CONTRACTOR understands and currently supports similar service level to the ones required in this RFP. CONTRACTOR believes in providing a complete and thorough Service Level Management plan to each of our State Partners. CONTRACTOR will remain committed to providing a high level of performance in our systems, applications and networks. The service level metrics collected will continue to be monitored and analyzed to ensure the high system availability the State/BOE has become accustomed to will be preserved, maintained, and even exceeded as the State has witnessed during heavy filing deadlines and Election night(s).

Several key members of the Contractor's Michigan team are ITILv3 Foundations certified, with the goal of all team members becoming certified in ITIL v3 Foundations.

### Service Level Performance Formulas and Algorithms

The Enterprise Application and System Availability shall be calculated, for a given measurement window, as (a) the total number of available hours during such measurement window, minus (b) the total number of unscheduled downtime divided by (c) available hours during such measurement window.

Availability is equal to the total number of hours in a month (24 hours multiplied by the number of days in the month). Maintenance or other state pre-accepted down time should be excluded when computing availability.

Unscheduled downtime is equal to the total number of hours (to the tenth of an hour) during which CONTRACTOR-managed infrastructure is not available for reasons outside of metric exclusions and solely due to the fault of CONTRACTOR.

Availability is equal to the available hours minus unscheduled downtime divided by available hours.

### EXAMPLE:

Given: Available Hours = 720 hours.

Unscheduled downtime = 7.2 hours.

$(720h - 7.2h = 712.8)$

Then: Computed % Availability =  $712.8 \div 720 = 99.00\%$

### Service Level Reporting

All vital system hardware is configured to log data and/or user traffic. Access to this data provides visibility into data center and website performance areas. Other operations-oriented management reports such as backup start and completion cycles and system updates/upgrades are also available to assist in the monitoring and evaluation of system and support service levels. These performance reports can be generated on a monthly basis or at different schedules upon mutual agreement by the State and CONTRACTOR PM's.

The State and CONTRACTOR PM will jointly maintain the user-friendly reporting format that the system data is compiled and presented in. When requested and available, performance data can be presented in both raw and formatted form to the State's QA managers to validate the accuracy of reports.



The CONTRACTOR PM regularly examines all data obtained from system reporting tools and methodologies. The focus of this process is to identify, correct, and prevent technical configuration problems and system/network bottlenecks proactively.

Periodically, the report data evaluation process itself, will be reviewed for accuracy, appropriateness and overall value. If necessary and upon mutual agreement by the State and CONTRACTOR PM, any of the existing review processes may be tailored to meet the States project needs and requirements.

#### How Contractor's system will meet the System Response Times

CONTRACTOR will continue to proactively identify (via system network tools and visual inspection) any possible system latency trends by reviewing performance data gathered and monitored daily. The performance data is also reported to the State monthly via the Monthly Status reports. If latencies occur, CONTRACTOR actively takes appropriate measures to identify and clear the issue to reduce or eliminate the effect a system user may be experiencing.

#### State and Contractor Roles

The roles that the State and CONTRACTOR will provide for the program will primarily remain unchanged from the current contract. The State/BOE PM will provide State-side Project Management and Subject Matter Expertise, approves downtime for scheduled maintenance and reviews CONTRACTOR performance reports. The CONTRACTOR PM will continue to provide updates to all Stakeholders on the pre-defined (via the BOE) schedule. CONTRACTOR will also continue to provide all relevant and requested project documentation. CONTRACTOR's technical resources will remain available to the State/BOE for consultation and assistance. The CONTRACTOR PM will continue to work closely with the State/BOE CA and PM to ensure our continued partner success. CONTRACTOR will procure, maintain and support all infrastructure monitoring and reporting tools.

Additional Roles assumed during Requirements Phase regularly include the following:

- State/BOE Technical Contact: Usually the BOE and CONTRACTOR's contact person for items needed from DTMB, Non-CONTRACTOR hardware or software is required or general BOE technical information is required for project.
- CONTRACTOR Tech Lead: Ensures documents captured as many known technical requirements as possible
- CONTRACTOR DBA: CONTRACTOR Tech Lead and PM interface with DBA to ensure database feasibility/issues are addressed.
- CONTRACTOR Systems Administrator: CONTRACTOR Tech Lead and PM interface with System Administrator to ensure infrastructure items are addressed.
- CONTRACTOR Security Analyst: CONTRACTOR Tech Lead and PM interface with Security Analyst to ensure solution meets all security standards and identifies any possible negative exposure that may exist.

#### State/BOE's Responsibilities

The BOE bears a general responsibility to report issues that prevent the Applications from operating within the mutually agreed to Metrics to CONTRACTOR in a timely manner and to provide information and support CONTRACTOR's efforts to diagnose and correct such Errors. The BOE will use reasonable effort in providing CONTRACTOR with information to diagnose the root cause of the Error or to recreate the original problem in a controlled diagnostic environment. CONTRACTOR may require BOE to provide supervised access to a state system to enable CONTRACTOR to gather additional diagnostic information.

Upon CONTRACTOR's discovery of a system emergency or Site One inoperability, the BOE must respond with urgency to CONTRACTOR's requests for information, verification of Error correction and approval for migration of Error corrections to the production environment.

CONTRACTOR shall not be liable for any delays, failures or service outages that result from the State's failure to timely provide any information, approvals or consents, content or other deliverables necessary to maintain



the State/BOE system at the mutually agreed to Metrics. Though CONTRACTOR is empowered and willing to assist in the event that such actions invoke a system emergency or application inoperability, CONTRACTOR's performance and response times do not include service outages caused by the State of Michigan, by its networks, by its other contractors, by its applications on state servers, by problems associated with state servers, failure of Internet connectivity due to state WAN unavailability or by changes to State specifications or standards that may be incompatible with MECCA system requirements and are implemented without adequate, prior notice and coordination.

#### **Contractor Responsibilities**

- Meet the SLA
- If it is a State-hosted solution, vendor will work designated DTMB liaison to resolve issues related to hosting.

#### **State Responsibilities**

- Monitor the SLA, and report defects to the Contractor

#### **Deliverable(s)**

- Monthly reports of performance
- Provide solutions to defects, against the SLA

#### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

#### **M. Reserve Bank of Hours for Future Enhancements and legislative changes**

Future enhancements will be required based on federal and state requirements or on customer service needs. A separate Statement of Work will be written for any required enhancements.

#### **SYSTEM ENHANCEMENTS**

The Contractor shall provide a bank of hours annually of hours to provide for maintenance and system enhancements. Hours left over at the end of a fiscal year will roll into the next year and be added to the available bank. No hours will be lost at the end of any fiscal year. The Contractor can alternately propose a single allotment of hours for the initial five (5) years of the contract to be used as needed throughout the life of the contract. Yearly extensions to the contract would provide for the 1000 hours annually with all other provisions applying.

The Contractor and the Bureau will develop an annual plan for the bank of hours used to ensure that no hours will be lost to the Bureau. This plan should be broken out by year, listing the cost per hour for each year.

The CONTRACTOR shall provide the BOE 1,000 Bank of Hours to utilize annually within the contract period. The hours can be used towards the support of the MERTS helpdesk, general programming/web programming support, DBA requests etc. Also, as in the past, the BOE will need to work with the CONTRACTOR PM to determine availability of resources being requested. Since BOH's are generally not pre-scheduled, CONTRACTOR will need the appropriate time to schedule the appropriate resource. Also, as in the past, CONTRACTOR expects that each year projects will use the large majority of the annual BOH allotment. CONTRACTOR will work with the Bureau to assure the annual work projects support State priorities and initiatives in an effective way. Staffing is positioned to support smooth provisioning of these services. CONTRACTOR expects that all BOH hours will be used by the end of the final year, unless the option periods are exercised, permitting further extension of BOH support.

Outside of the hours provided as part of the base services, CONTRACTOR and the Bureau may agree upon additional hours, for projects that are not supported by the base services' hours' allotment.

**Optional service - Leveraging State Systems for Michigan Counties**

CONTRACTOR believes that supporting the counties from the State Level is the correct path to go. This will allow the local level committees to eventually utilize a local version of the software. Long terms goals could also provide the BOE with a channel to work closer with the counties in gaining access to Elections e-Wizard data.

CONTRACTOR would follow the phased implementation approach for supporting counties:

- Phase One: CONTRACTOR would roll out the E-filing software (for Candidate, PAC, Political Parties and Ballot Question Committees) as-is to the counties in a phased approach. This will allow for counties to be up and running as quickly as possible. CONTRACTOR will setup or add to the existing support site, mertplus.com (will work with the State to determine what approach is best) a method for the counties to download the software and access the support material. Prior to this however, CONTRACTOR will enhance the datacenter hardware and software to accommodate the predicted load that county filing will place on the existing infrastructure. CONTRACTOR will ensure that no performance degradation occurs in the State system as a result of Counties coming online.
- Phase Two: CONTRACTOR will approach the Counties to determine if individual county software updates are needed. If so, CONTRACTOR will work directly with the county on funding such modifications. Changes made by CONTRACTOR for a county will not affect the State-provided hosting solution or database. If relevant, any changes made to the county version of the software that the State deems applicable and useful for the State version, could be considered for inclusion. System integrity will be maintained. Most of the changes we envision will be changes in the report names from State Office Names to the county equivalent, updates to the limit schedules, etc.
- Phase Three: Once the e-Filing solution has been put in place, CONTRACTOR will begin to offer the new Election Office Suite (EOS) to interested counties. The EOS system will eventually fully replace the existing BOE Back Office which contains the Committee Tracking, Scanning, Login, Payments, Report Review, and Rulings modules.
- Please refer to the Cost Tables, Reserve Bank of Hours, for the cost of implementing this optional solution for Michigan.

**Contractor Responsibilities**

- Writes a proposal

**State Responsibilities**

- Write a statement of work
- Review and approve proposal

**Deliverable(s)**

- To be defined in the SOW

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**N. Knowledge Transfer/Transition at the End of the Contract**

The contractor will be responsible for the orderly transition of the outsource services back to the Bureau's control, or to a new contractor, at the end of the contract. The transition process will take no more than 60 days to complete and has to be completed 30 days before the end of the contract.

Prior to the conclusion of the contract, but no earlier than three (3) months prior to the end of the Contract term, the CONTRACTOR will begin the process of migrating the State's products and services from the CONTRACTOR data centers and facilities back to the State's control. Throughout the life of the project, there



will be knowledge transfer points between the State and CONTRACTOR project manager. The CONTRACTOR project manager will educate the State PM on all of the software and processes that have been established within the contract timeframe. This will include going over written documentation of all processes and software, as well as “hands-on” training on all software.

During this time, CONTRACTOR will also provide to the State PM and Contract Administrator the specifications for the technical environment. If the State does not have the necessary hardware/software components, CONTRACTOR will assist the State PM and Contract Administrator in determining the components that need to be acquired by the State.

The CONTRACTOR project manager and the Contract Administrator will work closely during this time to make sure all information has been covered. During this exit phase, CONTRACTOR will provide a listing of all software and processes that are currently running, and in order for the exit process to be successful, the Contract Administrator will be required to sign-off that the knowledge transfer for each component has occurred.

#### Conversion Tasks

The existing State/CONTRACTOR-developed conversion plan will be updated to identify all conversion activities that must be performed by the BOE and by CONTRACTOR. CONTRACTOR will also assign a functional resource role to each task (system administrator, application analyst, programmer, etc.) in order to show the time required by each resource type. If necessary CONTRACTOR will also provide the anticipated resource name so that resource conflicts can be remedied across the multiple projects that a CONTRACTOR resource may be working on.

#### Conversion Time Line

This procedure should be engaged 90 days prior to the end of the contract. Like any other project, the contract exit process will include a project plan, detailed tasks, and timelines.

#### State and Contractor Roles

State and CONTRACTOR project roles will remain unchanged. Roles during transition will be dependent on the new operating model for the contract and whether there will be a third party involved in the operation of the system. CONTRACTOR’s Project Manager will continue to work closely with the State/Agency Project Manager and Contract Administrator throughout projects life cycle.

#### Contractor Responsibilities

- Provide up-to-date documentation to the State
- Provide data extracts or reports, as requested by the State

#### State Responsibilities

Review and accept documentation, extracts, and reports

#### Deliverable(s)

- Weekly summary report of activity and issues
- Conversion project plan and task list (due 90 days before contract end date)
- List of conversion activities (due 90 days before contract end date)
- Conversion Tasks
- Conversion Time Line

#### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.



## 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 will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

- Project Manager
- Technical lead

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

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

The PROJECT MANAGER (and his/her staff) shall be responsible for, but not limited to the following:

- Be available the same hours as the prime shift (currently Monday through Friday, 8 AM to 5 PM, local Lansing time, except State observed holidays), and otherwise as required to maintain service levels and resolve problems. During the conversion, filing deadlines periods, election days, certain subsequent applications implementation periods, and for certain special projects, special availability may be required.
- Coordinate Contractor services and access to Contractor customer support staff.
- Arrange for processing availability outside previously agreed to hours as requested by users and approved by the Bureau.
- Monitor day-to-day service levels and billings.



- Provide, on approval of the Bureau, processes, procedures, and an automated tracking system to report problems, track and monitor outstanding problems and the length of time from report to resolution, and document problem resolution. This will be available to the Bureau, and coordinated with the Michigan Department of State Help Desk.
- Develop and implement, with Bureau approval, problem escalation procedures, management reporting mechanisms, and resolution procedures.
- Develop and use a Change Management Plan as approved in advance by the Bureau to obtain approval of all changes to all aspects of processing services and facilities prior to their implementation.

The Contractor's **technical lead responsibilities** include, at a minimum:

- Support the project manager in the implementation of the all project phases
- provide solutions for all technical issues associated with the project.

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

**B. On Site Work Requirements**

**1. Location of Work**

- a. The work is to be performed, completed, and managed at the following locations:
  - a. The Michigan Department of State’s Bureau of Elections at 430 West Allegan Street in Lansing.
  - b. The location of Primary Production Site
  - c. The location of Secondary Production Site
- b. The State will provide the following resources for the Contractor’s use on this project at a location designated by the Bureau:
  - Work space
  - Desk
  - Telephone
  - Access to copiers and fax machine

The Contractor’s Project Manager shall ***be permanently located in Lansing at the State office facility***, with sufficient staff (preferably in the Lansing area) to effectively manage and administer the services defined in this contract.

The Contractor will provide skilled personnel with appropriate expertise and experience for the tasks to be performed.

**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. The 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 the project.

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

The Contractor shall provide adequate quality assurance standards and procedures for general processing facility services and for services provided specifically for the Bureau.

The Contractor will obtain advance approval from the Bureau for any management and control procedures, other than those previously agreed to, that are to be used.

The Contractor will provide the Bureau with ongoing updated documentation on the data processing facilities and services as required by the Bureau.

The Contractor shall provide adequate training to designated staff of the Bureau and other Contractor personnel to enable them to monitor the data processing facilities and services, and related reporting mechanisms, both initially and as a result of any changes thereto, at no additional charge to the Bureau.

The Contractor will provide unrestricted access to work products and staff to fulfill the quality assurance process.

At a minimum, the Bureau and Contractor will meet monthly and will conduct periodic audits to meet the following goals:

- Track and report on service level agreement performance.
- Validate customer utilization statistics.
- Help Desk utilization statistics.
- Review issues and planned special processing needs; for example:
- Special Election(s), CFR filing schedule, month-end, quarter-end, and year-end processing requirements.
- Peak Election cycles and/or special processing requirements.

The Contractor shall provide the Bureau with the details of the management structure, corporate chain of command, problem notification and escalation procedures, and specific contact information for key Contractor personnel. This information will be kept up to date throughout the term of the Contract.

### **System Programming Support**

CONTRACTOR shall provide On-site programming support to address daily system issues that occur (and frequent urgent work orders) to ensure the CFR Filing deadline and Election night results are as problem-free as possible. CONTRACTOR programming support staff are also made available via the CONTRACTOR PM for design/input meeting with the State as needed. Generally, CONTRACTOR provides all required technical knowledge on-site for the State/BOE.

### **Technical Support for MDOS Staff**

CONTRACTOR will continue to provide in-person support to the MDOS staff. CONTRACTOR will remain available to the State 24/7/365. CONTRACTOR will continue to maintain multiple communication conduits to ensure the appropriate staff is always available to the State, this includes but may not be limited to: Landlines (work and home), mobile phones, email, SMS text, and chat via IM. CONTRACTOR will continue to provide access to all system tools for reporting issues, defect tracking, and project task documentation.

### **Contract Administrator Duties**

Responsible for ensuring that all State/BOE Staff adhere to approved QA standards and guidelines detailed within the BOE's QA Plan. Responsible for approving and jointly monitoring QA processes (w/CONTRACTOR PM) throughout the life of the project. Also, responsible for observing 1) CONTRACTOR team responses to corrective action requests, and 2) Contractor team resolution of non-compliance issues.



**Customer Service Representative (CSR) duties**

The CONTRACTOR PM will be responsible for ensuring that the services of the Customer Services Representative (CSR) are provided. The CONTRACTOR PM may elect to perform this role personally or with the assistance of other CONTRACTOR team members.

The primary role of the CSR will be to ensure that support is available for the State/BOE staff and its customers in a timely manner throughout the contract and especially before and immediately following any BOE filing periods and Elections. CSR support includes both technical and administrative assistance for matters involving or related to the application software and hardware maintained by CONTRACTOR.

Detailed support responsibilities of the CSR are listed below:

- Monitoring daily contract service levels, configuration management and change management processes
- Coordinating daily/weekly/monthly meetings and activities between CONTRACTOR and the State
- Monitoring and tracking invoices and billings
- Assist State with required service for all e-Filing tasks
- Assistance with Back Office/ EOS Printing and Scanning
- Web Document Updates
- Other Duties as stated within the MECCA Contract

In the event that a planned or unplanned absence of the CSR is experienced, CONTRACTOR will dedicate one or more qualified project resources to the State to ensure that the duties of the CSR are performed without disrupting normal State activities. The State and CONTRACTOR PM’s are responsible for evaluating and determining the ‘emergency’ status of any unplanned leave of absence on a case-by-case basis.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The State will provide the following resources for the Contractor’s use on this project: Work space

- Minimal clerical support
- Desk
- Telephone
- Access to copiers and fax machine
- Access to MDOS standard State of Michigan PC equipment for testing purposes.

The State project team will consist of Executive Subject Matter Experts (SME’s), project support, and a DTMB and Agency project manager:

**Executive Subject Matter Experts**

The Executive Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The Executive SME’s will be empowered to:

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

Name	Agency/Division	Title	Phone/e-mail
Evelyn Quiroga	Elections	Division Director	517-335-2790, quirogae1@michigan.gov
Dave Tarrant	Elections	Department Analyst	517-373-2543, tarrantd2@michigan.gov



**State Project Manager- (DTMB and Agency)**

DTMB will provide a Project Manager who will be responsible for the State’s infrastructure and coordinate with the Contractor in determining the system configuration.

The State's Project 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
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Dan Klodt	DTMB	DTMB Project Manager
Evelyn Quiroga	Agency	Agency Project Manager

DTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Mark Lawrence <a href="mailto:Lawrencem1@michigan.gov">Lawrencem1@michigan.gov</a> 517 241-1640	DTMB / Procurement	Contract Administrator

The State project team will consist of the MDOS Implementation Core Team, a Project Manager, and an MDOS Contract Compliance Inspector.

The **MDOS Contract Compliance Inspector** (Bureau) who will be responsible for monitoring implementation and day-to-day operation is:

Evelyn Quiroga, Disclosure Data Division  
 Bureau of Elections  
 Michigan Department of State  
 Richard H. Austin Bldg., 1<sup>st</sup>. Floor  
 430 West Allegan Drive  
 Lansing, MI 48918  
 Phone: 517-335-2790  
 Fax: 517-241-4785

The MDOS Contract Compliance Inspector represents the impacted business area within MDOS as a subject matter expert and customer and will provide the vision for the business design and how the application shall provide for that vision. The Bureau will:

- Resolve project issues in a timely manner
- Review project plan, status, and issues



- Resolve deviations from project plan
- Provide user acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.

**Department of State Implementation Core Team** – The following individuals will participate in concert with the Contractor in the development of business requirements, testing and implementation of the system. They will perform all other necessary duties and responsibilities as assigned by the project manager(s) or sponsors.

Evelyn Quiroga

Joshua Endsley - Finance/Audit (TBD)

DTMB Agency Services (TBD)

## 1.203 OTHER ROLES AND RESPONSIBILITIES - RESERVED

### 1.300 Project Plan

#### 1.301 PROJECT PLAN MANAGEMENT

##### **Orientation Meeting**

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

##### **Performance Review Meetings**

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

##### **Project Control**

1. The Contractor will carry out this project under the direction and control of DTMB, MDOS Bureau of Elections.
2. Within (30) working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
  - The Contractor's project organizational structure.
  - The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
  - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
  - The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. The Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:



- Staffing tables with names of personnel assigned to Contract tasks.
  - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next (60) calendar days, updated semi-monthly).
  - Updates must include actual time spent on each task and a revised estimate to complete.
  - Graphs showing critical events, dependencies and decision points during the course of the Contract.
- b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

**1.302 REPORTS**

Reporting formats must be submitted to the State’s Project Manager for approval within 30 business days after the execution of the 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.

The Contractor shall provide a monthly report to the Bureau for review, and adjustment if necessary. The report is due within 5 business days following the last day of each month. The contents of the monthly report will be proposed by the Contractor and accepted or rejected by the Bureau. The reports will, at a minimum, contain

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

**1.400 Project Management**

**1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State’s Program Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

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

The Bureau will closely monitor Issue Management and will relate any issues which endanger the project to the attention of the Contractor, MDOS management and if deemed necessary by the Bureau to the attention of the Contract Administrator. The project is endangered when the Bureau is unable to meet its statutory obligations in a timely manner.



Contractor shall propose a standard issue management process for managing the project as part of its bid response. The proposal shall include responsible parties, phone numbers, email addresses if relevant, and processes.

#### 1.402 RISK MANAGEMENT

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

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

The Bureau will closely monitor risk management and relate any issues which endanger the project to the attention of the Contractor, MDOS management and if deemed necessary by the Bureau to the attention of the Contract Administrator. The project is endangered when the Bureau is unable to meet its statutory obligations in a timely manner. The Bureau will monitor the identified risks and mitigation strategy proposed by the Contractor.

Contractor shall propose a standard risk management process for managing the project as part of its bid response. The proposal shall include:

- Identification of the risks in the project,
- Assign a level of priority based on the probability of occurrence and impact to the project,
- Definition of mitigation strategies,
- A schedule of risk assessment review to ensure that they are conducted on a regular basis,
- Identify and explain any deviations from the proposed risk management process, and
- Identify the risk management process to be utilized for this project, including responsible parties, phone numbers, email addresses if relevant, and processes.

#### 1.403 CHANGE MANAGEMENT

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

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Management and Budget (DMB), Acquisition Services buyer, who will make recommendations to the Director of Acquisition Services regarding ultimate approval/disapproval of change request. If the DMB Acquisition Services Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Acquisition Services buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Acquisition Services, 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.

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.



The State reserves the right to modify the services during the course of the contract with approval of the Contractor, and the DMB Acquisition Services. Such modifications may include adding or deleting tasks or services and /or other modification deemed necessary.

### **1.500 Acceptance**

#### **1.501 CRITERIA**

Unless otherwise stated in the Statement of Work or Purchase Order, "Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State.

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW:

- The Bureau will accept deliverables after review, testing as appropriate and sign-off on a Change Request form or an Acceptance Criteria Document.
- All documents will be reviewed within 5 business days. Documents must be submitted electronically in MS Office, or Adobe formats.
- Some deliverables may require a presentation or meeting to explain its content and implication. MDOS will request these meetings or presentations as needed.

#### **1.502 FINAL ACCEPTANCE**

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

### **1.600 Compensation and Payment**

#### **1.601 COMPENSATION AND PAYMENT**

##### **Payment**

Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

The State shall pay invoices within 45 days of receipt.

The first invoice and payment should be adjusted to synchronize to the State fiscal quarters. Depending on the date the contract Agreement is signed the first payment may be more or less than a full quarter's payment, depending on if the quarter is more than 50% completed or not. If the quarter is less than half completed add the prorated days to the next quarter invoice. If the quarter is more than half completed, invoice the prorated time up to the next quarter.

- 1<sup>st</sup> Quarter – October 1 thru December 31
- 2<sup>nd</sup> Quarter – January 1 thru March 31
- 3<sup>rd</sup> Quarter – April 1 thru June 30
- 4<sup>th</sup> Quarter – July 1 thru September 30

For Base Service, the Contractor shall invoice at the end of the quarter, for the quarter worked.



Costs for the **Reserve Bank of Hours** shall be described in a statement of work, and shall be invoiced quarterly, at the end of the quarter worked.

Costs for the **Reserve for enhancements to Hosting and Operational Services** shall be invoiced quarterly, at the end of the quarter worked.

For HAVA/ENR hours, the Contractor shall invoice at the end of the quarter, for the quarter worked.

For Software license costs in the option years, the cost will be negotiated in last year of the base contract term.

For Software maintenance and support costs in the option years, cost will be negotiated in last year of the base contract term.

### **Software Pricing**

The Bureau requires that the Contractor establish a formula that defines the maximum charges applicable for future software/application additions outside the scope of this CONTRACT. Any software licenses procured by the Contractor to maintain or enhance the system will be owned by the State. The ownership of additional third party software by the state shall apply to utilities or software linked with the operation of the system (like an open source pdf utility), and not the development tool sets used by developers (such as Java development tools sets, etc.).

The Bureau requires that the maximum charge for additional software/application should not exceed the lowest net price the Contractor pays for the software license plus 0% markup.

The Contractor shall make a reasonable effort to reduce this additional software/application cost to the lowest possible level using methodologies such as usage-based licensing, shared cost, etc.

Additionally, the Contractor is required to pass on any reasonable cost reductions due to discontinued usage of software previously in use pursuant to work defined in this CONTRACT.

All costs associated with any claim of services made by Contractor in response to this this Contract will be considered as fully included in the usage pricing matrices, conversion cost, transition cost, or end of contract exit costs as defined in Contractor's Price Proposal.

### **Travel**

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

### **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.

### **Invoicing**

Contractor will submit properly itemized invoices to

MDOS Payment Processing  
430 W. Allegan St.  
Lansing, MI 48918

. 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;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

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.

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

### **1.602 HOLDBACK RESERVED**

#### **1.7 Additional Terms and Conditions Specific to this SOW**

### **1.701 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**

#### **A. Directives**

The Contractor may provide any additional statements, comments, or concerns as it relates to this contract that have not been addressed in the contract and that the Contractor believes should have been addressed in the contract.

The Contractor may leverage the applications and programming code to assist Michigan State County Clerk's Offices in automating their Campaign Finance Systems.

The Contractor may charge the County Clerk's Offices only for the work or other services needed to accomplish the adjustments requested by the clerks and the normal profit margin paid to the Contractor under normal business contracts.



The Contractor may not charge the County Clerk's Office for work that MDOS has purchased or otherwise paid for in full or in part.

#### **Optional migration of database to Oracle**

As an option, the database supporting BOE functions may be migrated to the Oracle RDBMS. The cost of licenses and servers would be provided to the state without markup, as required. An additional staff position would support migration, application to all functionality, and enhanced services. An attachment to our price proposal will show the commercial pricing for licenses, and the cost of the dedicated staff resource. CONTRACTOR will be pleased to work with the state to identify sourcing for the lowest possible cost for Oracle licenses. Thus the commercial pricing shown, may be reduced by working with the state. **To do this option, a contract change would be processed, to add funding and provide details in a statement of work.**

#### **Assistance to Michigan County Clerk's Offices**

CONTRACTOR understands that the state permits the leveraging of MECCA applications and programming code to assist Michigan State County Clerk's Offices in automating their Campaign Finance Systems. And, that in providing support for the County Clerk's Offices the Contractor may only charge for the work or other services needed to accomplish the adjustments requested by the clerks and the normal profit margin paid to the Contractor under normal business contracts. The CONTRACTOR understand that it may not charge the County Clerk's Offices for work that MDOS has purchased or otherwise paid for in full or in part. Where partial payment has been provided by MDOS, County Clerk Offices charges will reflect the percentage reduction of payments received. BOE will monitor this process.

#### **B. Other Contractors**

The State has and/or may contract with other entities to perform technical services or provide other equipment and software to work with the items provided under this contract. The Contractor shall work with these other entities and provide them necessary technical information and required support to accomplish +the efforts required by the contract with the State.



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

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

#### **2.001 CONTRACT TERM**

**This Contract is for a period of five (5) years beginning 04/01/2014 through 3/31/2019.** 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 five (5), one (1) year periods, or for a lesser period.**

#### **2.003 LEGAL EFFECT**

Contractor accepts this Contract by signing two copies of the Contract and returning them to the DTMB-Procurement. 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 & EXHIBITS**

All Attachments 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.



## **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 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, Procurement and MDOS (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The DTMB-Procurement Contract Administrator for this Contract is:

Mark Lawrence, Buyer  
Procurement  
Department of Technology, Management and Budget  
Constitution Hall, First Floor NE  
525 W. Allegan St.  
P.O. Box 30026  
Lansing, MI 48909  
Email lawrencem1@michigan.gov  
Phone 517 241-1640

## **2.022 CONTRACT COMPLIANCE INSPECTOR**

The Director of DTMB-Procurement 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. DTMB-Procurement 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:

Evelyn Quiroga, Division Director  
Michigan Department of State  
430 W. Allegan St.(Address)  
QuirogaE1@michigan.gov  
(517) 373-2540  
(517) 373-0941

### **2.023 PROJECT MANAGER**

The following individual will oversee the project:

Dan Klodt  
DTMB Operations Center  
7285 Parsons Drive  
Lansing, MI 48913  
Email: klodtd@michigan.gov  
Phone: (517)636-0234  
Fax: (517)636-0401

### **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, Procurement.
  - (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  
 Procurement  
 Attention:  
 PO Box 30026  
 Lansing, Michigan 48909

and

Evelyn Quiroga, Director  
 Disclosure Data Division  
 Michigan Bureau of Elections  
 PO Box 20126  
 Lansing, Michigan 48901-0726

Contractor:

Name: David Freund  
 Address: NIC Technologies, LLC 4601 N. Fairfax Drive Suite 1160, Arlington, VA. 22203



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.

### **2.030 General Provisions**

#### **2.031 MEDIA RELEASES**

News releases (including promotional literature and commercial advertisements) pertaining to the 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 Contract are to be released without prior written approval of the State and then only to persons designated.

#### **2.032 CONTRACT DISTRIBUTION**

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



### **2.033 PERMITS**

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State 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.
- (d1) 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 Procurement, Department of Management & Budget. This activity shall occur only upon the specific written direction from DTMB-Procurement.

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) Notwithstanding anything in this Contract to the contrary, Contractor shall be entitled to manage non-Key Personnel as it sees fit and shall not be required to obtain the State's permission to utilize such employees' to perform projects outside of the Contract.

#### **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, Procurement 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 applicable 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 applicable 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 such shorter time period as agreed to by the parties.



## 2.093 PCI DATA SECURITY STANDARD RESERVED

### 2.100 Confidentiality

#### 2.101 CONFIDENTIALITY

**State of Michigan Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State (“**State Data**”); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State, or an industry standard format if Contractor does not maintain the State Data in the requested format. Contractor will assume all reasonable costs incurred in so compiling and supplying State Data. No State Data may be used for any marketing purposes.

**Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communications not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “Confidential Information” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party, including, without limitation, trade secrets as that term is defined by applicable law. The term “Confidential Information” does not include any information or documentation that was: (i) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (ii) already in the possession of the receiving party without an obligation of confidentiality; (iii) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (iv) lawfully obtained from a source other than the disclosing party without an obligation of confidentiality; or, (v) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information, subject to the foregoing exclusions. In addition the following shall constitute Confidential Information of Contractor:
  - i. All books, records, documents, and electronic files that pertain to Contractor’s business or operation or to that of its corporate parent, affiliate, or subsidiary (as contrasted to Contractor’s operation of the Network) unless the same are disclosed publicly by Contractor or its corporate parent, affiliate or subsidiary; and
  - ii. All customer and user information that contains separately identifiable financial and subscriber information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to (i) copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or (ii) to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and Subcontractors of their obligations to keep all Confidential Information confidential and shall require such employees, agents and Subcontractors to agree, in writing, to confidentiality and use obligations at least as restrictive as those contained in this Contract. Disclosure to 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 responsibilities; and (c) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use commercially reasonable efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party promptly in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Freedom of Information Act. Subject to the requirements of the Freedom of Information Act, MCL 15.231 *et seq.*, , the State will endeavor not to disclose or produce for any purpose, including in response to a subpoena or other court or governmental order, without giving Contractor, or its successors, assigns, parents, or subsidiaries five business (5) days' written notice and an opportunity to object to the disclosure or production of any of the confidential, proprietary, or trade secret information of Contractor or its corporate parent, affiliates, and subsidiaries (collectively referred to herein as the "Contractor Confidential Information"). At the request of the State, Contractor shall provide such reasonable assistance as may be requested by the State to comply with this provision.
- e. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within five (5) calendar days from the date of termination to the other party. Notwithstanding the foregoing, to the extent Confidential Information cannot be completely returned or destroyed (i.e., in the case of metadata, etc.), then the same shall not be a breach of this Contract, provided that such party continues to maintain the confidentiality of such Confidential Information.

### **2.110 Records and Inspections**

#### **2.111 RECORDS, MAINTENANCE, INSPECTION, EXAMINATION AND AUDIT.**

**Records Maintenance, Inspection, Examination, and Audit.** Under MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract upon providing 10 days notice.. Contractor must retain, and provide to the State or its designee and the auditor general upon request, ll financial and accounting records related to this Contract.. Such accessibility and disclosure will not, by itself, cause any such records that constitute Contractor Confidential Information to lose their protected status hereunder. Such obligations shall run through the term of the Contract and for 6 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all



issues are resolved. The auditing party hereunder shall not audit any matters outside of the scope of the individual contract unless there is a separate constitutional or statutory basis for that audit.

Proprietary financial and accounting data and records associated with the Contract shall be exempt from disclosure under the Freedom of Information Act, as provided in MCL 18.1470(3).

Within 10 days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

### **2.112 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. 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.

### **2.113 ERRORS**

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, Procurement.

#### **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 or infringement or the like.

#### **2.125 EQUIPMENT WARRANTY**

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it shall maintain the equipment/system(s) in good operating condition and shall



undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

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

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

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

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

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

#### **2.126 EQUIPMENT TO BE NEW**

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

#### **2.127 PROHIBITED PRODUCTS**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order pursuant to **Section 2.024**.

#### **2.128 CONSEQUENCES FOR BREACH**

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



**2.130 Insurance**

**2.131 LIABILITY INSURANCE**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims 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 else they engage to provide services on their behalf hereunder.

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.

General Liability 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, unless otherwise approved by the State.

See [www.michigan.gov/dleg](http://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
  - \$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 the General Liability insurance policy contains 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, if any, 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 the Automobile Liability insurance policy contains 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 Bodily injury by Accident - each Accident
  - \$100,000 Bodily injury by Disease - each Employee by Disease
  - \$500,000 Bodily injury by Disease – Policy Limit
  
- 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).

## 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 DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **The Contract 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/insurance broker. All Certificate(s) must contain a provision indicating that coverage afforded under the policies SHALL NOT BE CANCELLED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, 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 after 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 below the limits, or contrary to the requirements, contained in this Section 2.130 as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance below the



limits or contrary to the requirements, contained in this Section 2.130 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 and opportunity to rectify the non-compliance, 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. Notwithstanding anything contained in this Contract to the contrary, Contractor shall not be liable for or otherwise obligated to indemnify the State for (i) events or occurrences that are outside of its, or its employees, agents and subcontractors (as the case may be) control; or (ii) any events or occurrences that are not due to the negligence, or willful/intentional misconduct of Contractor, its employees, agents and subcontractors. As a point of further clarification, it is agreed that Contractor shall not be liable for, or obligated to indemnify the State for, events or occurrences that arise due to the negligence or misconduct of the State or anyone acting under their direction or otherwise under their control.

#### **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**

During the term of this Contract and for a period of one year following the termination of this Contract for any reason (such period, the "IP Indemnification Period"), 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, during the IP Indemnification Period, should the equipment, software, commodity, or service, or its operation, become or in the Contractor's opinion be likely to become the subject of a valid and enforceable 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 or software 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. In the interest of clarity, nothing in this Section 2.144 shall be deemed to prevent the State from seeking an indemnification claim as contemplated under this Section 2.144 if the cause of action arose prior to the end of the IP Indemnification Period, but is not filed or otherwise pursued until after the IP Indemnification Period but during the applicable statute of limitations.

## **2.145 OMMITTED INTENTIONALLY**

### **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, or such sooner time as may be required by the notice and proceedings, 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").
- (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 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, which shall not be unreasonably withheld; 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 in the event Contractor is declared bankrupt or voluntarily is the subject of any liquidation or insolvency proceeding Section that is not dismissed within ninety (90) days of filing. 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. The State may elect to control the defense of a claim in the event the State believes the claim involves issues of State policy or in the event the State and Contractor disagree with respect to whether to accept a settlement, provided, that, in such an instance, the State will proceed at its own cost and Contractor's indemnification obligation with respect to said claim shall immediately cease.
- (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. 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 ninety (90) 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 Procurement, 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 Procurement, 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 Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor 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 Licensing and Regulatory Affairs, 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 total liability for any and all damages to the State is limited \$4,500,000. 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 total liability for any and all damages to the Contractor is limited to \$4,500,000.

The limitations provided for herein shall not affect either party's obligation to obtain the policies of insurance required under this 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 DTMB-Procurement.
  - (2) Contractor shall also notify DTMB Procurement 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 DTMB-Procurement within 30 days whenever changes to company affiliations occur.

### **2.232 CALL CENTER DISCLOSURE**

Contractor and/or all subcontractors involved in the performance of 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.

As used in this Contract with respect to liquidated damages, the term "improper completion of the Work" shall mean instances in which the Work does not materially meet the functional specifications that are applicable to such Work.



Under no circumstances shall liquidated damages and hourly performance credits be assessed for the same event or set of circumstances. It is the intent of the parties that these liquidated damages shall apply only to final software that (i) is not delivered by the applicable Material Deadline, as agreed to the parties in writing; or (ii) materially fails to meet the applicable functional specifications (as detailed above).

#### 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**

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

Prior to delivering any Deliverable to the State, Contractor will first perform all required quality assurance activities, and, in the case of Custom Software Deliverables, System Testing to verify that the Deliverable is complete and in conformance with its specifications. Before delivering a Deliverable to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such quality assurance activities and testing, (4) the Deliverable is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

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

#### **2.252 CONTRACTOR SYSTEM TESTING**

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

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

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

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



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

### **2.253 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**

The State will conduct UAT of each Custom Software Deliverable in accordance with the following procedures to determine whether it meets the criteria for State approval – i.e., whether it conforms to and performs in accordance with its specifications without material deficiencies.

Within thirty (30) days (or such other number of days as the parties may agree to in writing) prior to Contractor's delivery of any Custom Software Deliverable to the State for approval, Contractor shall provide to the State a set of proposed test plans, including test cases, scripts, data and expected outcomes, for the State's use (which the State may supplement in its own discretion) in conducting UAT of the Custom Software Deliverable. Contractor, upon request by the State, shall provide the State with reasonable assistance and support during the UAT process.

For the Custom Software Deliverables listed in an attachment, the State Review Period for conducting UAT will be as indicated in the attachment. For any other Custom Software Deliverables not listed in an attachment, the State Review Period shall be the number of days agreed in writing by the parties (failing which it shall be forty-five (45) days by default). The State Review Period for each Custom Software Deliverable will begin when Contractor has delivered the Custom Software Deliverable to the State accompanied by the certification required by this **Section** and the State's inspection of the Deliverable has confirmed that all components of it have been delivered.

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



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

### **2.256 FINAL ACCEPTANCE**

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

### **2.260 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.

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

## **2.280 Extended Purchasing**

### **2.281 MIDEAL (MICHIGAN DELIVERY EXTENDED AGREEMENTS LOCALLY**

#### **A. MiDEAL Requirements**

1. The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing. A current listing of approved MiDEAL Members is available at: [www.michigan.gov/mideal](http://www.michigan.gov/mideal).
2. The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.
3. The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.
4. Estimated requirements for MiDEAL members are not included in the quantities shown in this RFP, unless otherwise noted.
5. The State of Michigan reserves the right to negotiate additional discounts based on any increased volumes by MiDEAL members.

#### **B. MiDEAL Administrative Fee**

1. The Contractor must remit a MiDEAL administrative fee on all sales transacted under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals one percent of the total quarterly sales reported.
2. The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.
3. The Contractor must send the check to the following address:  
Department of Technology, Management and Budget  
Financial Services – Cashier Unit  
Lewis Cass Building  
320 South Walnut St.  
P.O. Box 30681  
Lansing, MI 48909



## 2.282 STATE EMPLOYEE PURCHASES

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor shall send its invoices to and pay the State employee on a direct and individual basis.

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

## 2.283 COOPERATIVE PURCHASING

- (a) This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between the State of Michigan and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this Contract if such State allows participation by such entities.
- (b) All MiDEAL processes, invoicing relationships, reporting and MiDEAL Service Fee also apply to cooperative purchasing participants.
- (c) The State of Michigan reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### 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](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. 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**

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

### **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**

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and exercise its full rights in the Deliverables, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables.

##### **2.322 CROSS-LICENSE, DELIVERABLES AND DERIVATIVE WORK, LICENSE TO CONTRACTOR**

The State grants to the Contractor, the royalty-free, world-wide, non-exclusive right and license under any Deliverable and/or Derivative Work now or in the future owned by the State, or with respect to which the State has a right to grant such rights or licenses, to the extent required by the Contractor to market the Deliverables and/or Derivative Work and exercise its full rights in the Deliverables and/or Derivative Work, including, without limitation, the right to make, use and sell products and services based on or incorporating such Deliverables and/or Derivative Work.

##### **2.323 LICENSE BACK TO THE STATE**

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.

##### **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.

### **2.326 OWNERSHIP OF MERTS SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS CONTAINED THEREIN.**

The parties hereby understand and agree that notwithstanding anything contained in this Contract to the contrary, NIC Tech shall continue to own all rights, title and interest in the MERTS Software. For purposes of this Section 2.326 the term "MERTS Software" shall mean: (i) the MERTS software solution (to include both the desktop based solution and the web-based solution), (ii) any updates, modifications and/or changes to such software solutions created under this Contract, or otherwise created by or on behalf of the State pursuant to the license granted herein, (iii) any and all documentation associated with the foregoing or the following; and (iv) any and all intellectual property rights embodied in any of the foregoing, including, without limitation, patent rights, copyrights, trade secret rights, mask work rights, trademark rights, sui generis database rights, proprietary processes, procedures and business rules and all other intellectual and industrial property rights of any sort throughout the world relating to, and in, the MERTS Software and documentation. It is hereby understood and agreed that the MERTS Software is proprietary and confidential information of Contractor. Except to the extent already licensed to the State pursuant to the previous contract executed by the parties, the MERTS Software, including any enhancements, customizations or modifications thereto, shall be licensed to the State pursuant to a separate license agreement that allows for the continued use, alteration and modification of the same following the natural expiration of the Contract or the termination of the Contract by the State for cause. Such license shall grant the State with the perpetual, royalty-free right to use, modify, or enhance the MERTS Software, including from a remotely hosted third party location. The license shall not allow the State to sell or otherwise transfer the MERTS Software.

### **2.330 Source Code Escrow RESERVED**



**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.



**Appendix A - Cost Tables**  
Table 1: Summary of the Project Cost

*These costs apply to the 5-year contract base period only, not the option years.*

	<b>Base Service *</b>	<b>Reserve Bank of Hours for future enhancements and legislative changes +</b>	<b>Reserve for enhancements to Hosting and Operational Services #</b>	<b>Reserve Bank of hours for maintenance to HAVA/ENR</b>	<b>Total</b>
<b>Year 1</b>	\$1,105,000.00			\$66,258.00	\$1,171,258.00
<b>Year 2</b>	\$1,308,224.00			\$66,258.00	\$1,374,482.00
<b>Year 3</b>	\$1,289,127.00			\$66,258.00	\$1,355,385.00
<b>Year 4</b>	\$1,300,375.00			\$66,258.00	\$1,366,633.00
<b>Year 5</b>	\$1,335,170.00			\$66,258.00	\$1,401,428.00
<b>Sub Total</b>	\$6,337,896.00	\$253,920.00	\$810,512.00	\$331,290.00	\$7,733,618.00
<b>Election Night Reporting/HAVA - 1,828 Hours</b>				\$336,292.00	\$336,292.00
<b>Total Contract Amount</b>	\$6,337,896.00	\$253,920.00	\$810,512.00	\$667,582.00	\$8,069,910.00

\* Maintenance services for the existing system (excluding the HAVA/ENR component)

+Reserve of hours for future enhancements to the existing system

# Non-professional service (i.e., hourly development) costs, including hosting



The Contractor shall provide full base service levels equally in all years of the contract.

### **Column 1 – Base Service**

Include in this cost, RFP, 1.104 Work and Deliverables, section L Software License, Maintenance, and Support, and section K Hosting and Operation Services.

Do not include in this cost: ENR Maintenance, Full ENR Support, Tech Refresh and Maintenance, support for Counties, bank of hours.

Services included:

1. Support for normal maintenance only
2. Full operational support for both data centers
3. Full security support for both data centers.
4. Daily support and services support for operations
5. Assuring operations of Existing Systems.
6. Effective maintenance management and reporting
7. 764 of the 1000 BOH provided for in Section M (Page 50) of the contract.

Considerations/limitations

1. The Contractor will provide 3.6 dedicated FTE, total staff hours per year 7,628.
2. No overtime, 40 hour/week only as directed.
3. Maintenance on existing systems. New development, in remaining time after maintenance.
4. Maintenance of existing technical infrastructure.
5. SLA downgraded to reflect replacement on obsolescence or failure.
6. Base election night support (full election night support as directed by BOE).

### **Column 2 - Reserve Bank of Hours for future enhancements and legislative changes, not allocated to a specific year**

For services, use the rate of \$184.00 per hour, in Cost Table 2. A purchase order will be made, after the State provides a statement of work, and the Contractor provides a quote. The contractor may submit invoices monthly, for the hours worked in that month. This may be used for county initiatives, after approval by the Agency PM, and the DTMB PM.

### **Column 3 - Reserve for enhancements to Hosting, and Operational Services**

This reserve is used for system enhancements that are NOT hourly services, such as equipment refresh, software or hardware. This may be used for county initiatives, after approval by the Agency PM, and the DTMB PM.

### **Column 4 - Reserve Bank of hours for enhancements & maintenance to HAVA/ENR**

For services, use the rate of \$184.00 per hour, in Cost Table 2. A purchase order will be executed by both parties,, after the State provides a statement of work, and the Contractor provides a quote. The contractor may submit invoices monthly, for the hours worked in that month. BOE will pay the banked hour rate for the ENR work and a statement of work will be created to cover the project.

For **HAVA** maintenance (years 1-5, \$66,258.00 per year), the BOHs will be fully used during the 5 year period. Thus the funding for these hours will be worked with BOE specified HAVA related projects, billed and collected during the five years. For **HAVA enhancement** (\$336,291.93), the BOHs will be billed as used, and the State may not fully utilize the allotted enhancement hours.



Table 2: Reserve Bank of Hours for Future Enhancements

No.	Resource Type	
I	Project management	
	System analysts	
	Programmer/developers	
	Database administrators	
	System Architects	
	Network engineer/administrator	
	Software Architects	
	Web developers	
	Application trainers	
	System technician	
	Certified instructor	
	Applications instructor	
	hourly rate to charge for all services	\$184.00

**Notes:**

1. Hourly rates quoted are firm, fixed rates for the duration of the contract 5-YEAR BASE PERIOD. Travel and other expenses will not be reimbursed. "Estimated Hours" and "Extended Price" are non-binding and will be used at the State's discretion to determine best value to the State. The State will utilize the average discounted \$184.00 hourly rate (\$184.00) detailed above for each staff that will be used as fixed rates for responses to separate statements of work.
2. Enhancements will be made based on available funding.
3. Unless otherwise agreed by the parties, each Statement of Work will include:
  - a. Background
  - b. Project Objective
  - c. Scope of Work
  - d. Deliverables
  - e. Acceptance Criteria
  - f. Project Control and Reports
  - g. Specific Department Standards
  - h. Payment Schedule
  - i. Travel and Expenses
  - j. Project Contacts
  - k. Agency Responsibilities and Assumptions
  - l. Location of Where the Work is to be Performed
  - m. Expected Contractor Work Hours and Conditions
4. The parties agree that the Services/Deliverables to be rendered by Contractor using the future enhancements/rate card on this Contract will be defined and described in detail in separate Statements of Work. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a purchase order issued against this Contract.



Appendix B - Technical/General System Requirements

Technical requirements for this project are identified in the tables provided in this section.

#	Detailed Requirement	Comments
A.	<p>The Contractor shall maintain all software that the Contractor provides to the Bureau pursuant to this RFP, at the most current release level (including initial release and all maintenance and enhancement releases) which shall be no later than six (6) months after general availability of the release, with the following exceptions:</p> <ul style="list-style-type: none"> <li>• The current release will not properly function with other software products the Bureau requires;</li> <li>• The Bureau is not prepared to authorize the Contractor to modify application programs to function with the new release, and;</li> <li>• That the Contractor and the Bureau mutually agree to delay beyond the defined six (6) month requirement.</li> </ul>	<p>CONTRACTOR shall maintain all versions of software for future retrieval. CONTRACTOR also maintains all source code via their source code repository, and leverages the Archival process for software no longer in use.</p>
B.	<p>In the case of the first two bullets immediately above, the Contractor and the Bureau shall mutually agree to establish a specific and reasonable schedule for implementing the release at the time the Contractor or the Bureau identifies that a conflict exists.</p>	<p>The Move to Production Approval/Signoff form states the date the State would like the software released.</p>
C.	<p>The Contractor shall assure and maintain software compatibility with all hardware the Bureau currently utilizes.</p>	
D.	<p>The Contractor shall establish and maintain a documented multi-year, Bureau-specific technology plan that includes both hardware and system software technology.</p>	<p>CONTRACTOR will establish a new Technology plan for the BOE..</p>
E.	<p>The Contractor's technology plan shall include an overview of the general technology plan for the data center providing services to the Bureau.</p>	<p>CONTRACTOR will include an overview on the technology plan for the data center in the Technology Plan.</p>
F.	<p>The Contractor shall establish the initial Bureau-specific technology plan as soon as it is reasonably possible after Contract execution, but no later than the date the Bureau transitions its processing to the Contractor.</p>	<p>CONTRACTOR will establish a new Technology plan for the BOE.</p>
G.	<p>The Contractor shall establish, on at least an annual basis, a detailed review of the technology plan and shall modify the plan as appropriate to meet the Bureau's business objectives.</p>	<p>CONTRACTOR will review the technology plan on a quarterly basis. CONTRACTOR also reviews these items monthly during our status meetings.</p>
H.	<p>The Contractor shall use industry best practices to continually evaluate and identify relevant software and hardware technology advances and propose options to the Bureau which the Contractor views as potentially advantageous to the Bureau.</p>	<p>The Contractor shall provide yearly Technical Conferences for this explicit purpose. CONTRACTOR also attends other conference to ensure our State Partners are aware of and can take advantage of these technology advancements.</p>



#	Detailed Requirement	Comments
I.	<p>The Contractor's data center facilities, and associated supporting systems used to provide services to the Bureau, shall meet or exceed DTMB Standards for a Tier III data center.</p> <ul style="list-style-type: none"> <li>• Facility support equipment (i.e., HVAC, Uninterruptible Power Systems, motor generators, turbines, communication facilities, etc.); Multiple power and cooling distribution paths with only one active; redundant components; concurrently maintainable for less than 1.6 hours of downtime per year</li> <li>• Maintenance practices;</li> <li>• Security equipment and practices (i.e., physical site security, software security, access control, etc.); Security camera's in place at all sites, access requires an access security card.</li> <li>• Safety equipment and practices (i.e., fire suppression, alarms, smoke detection, etc.). An incipient level smoke detection system should be installed, and</li> <li>• Reliability and redundancy practices (i.e., multiple power feeds, multiple communication facility routings, etc.).</li> </ul>	<p>CONTRACTOR datacenters meet and/or exceed these requirements. These requirements are also required to become and maintain Terremark (Verizon Business) SMP Certified.</p>

Data Processing Services Requirements, Operational Standards and Procedures

J.	<p>Contractors who are opting for a contractor-hosted option will deliver to the Bureau a draft Data Center Standards and Procedures Manual (to be used in connection with its services) within eight (8) weeks of the effective date of the Contract.</p>	<p>CONTRACTOR will create a new Data Center Standards and Procedures Manual..</p>
K.	<p>This draft Manual will then be subject to a review and approval process to be conducted by the Bureau. This review will be completed within thirty (30) business days following submission to the Bureau and the resulting standards and procedures will be implemented upon approval of the Manual.</p>	
L.	<p>All Contractor staff servicing the Bureau account will be required to follow the approved operational standards. Standards will be written in a clear and concise manner, as follows:</p> <ul style="list-style-type: none"> <li>• Standards shall plainly state whether the rule is rigid (must, shall, will), advisory (should), or permissive (may).</li> <li>• Standards shall clearly spell out exceptions. If none are given, then none shall be permitted.</li> <li>• Standards shall specify authority and responsibility.</li> <li>• Standards shall be consistent. One standard must never contradict or confuse another standard.</li> </ul>	<p>CONTRACTOR will include this detail in the Data Center Standards and Procedures Manual.</p>



M.	<p>The Data Center Standards and Procedures Manual will have a periodic revision schedule and will be kept up-to-date by the Contractor. Revisions will be submitted to the Bureau for review and approval. The following will be included:</p> <ul style="list-style-type: none"> <li>• Each standard will include an effective date and, once revised, a revision date.</li> <li>• The Manual shall include an index that lists the latest date for each standard.</li> <li>• Revised standards will be issued when major events affecting standards occur.</li> <li>• A cover memorandum describing the scope of the revision will be issued with each revision.</li> <li>• When a revision is issued, changed information will be identified. A vertical bar in the margin next to changed material will be used for this purpose.</li> </ul>	<p>CONTRACTOR will include this detail in the Data Center Standards and Procedures Manual..</p> <p>CONTRACTOR will also continue to provide this detail of service to all other system/project documents where needed.</p>
N.	<p>The Data Center Standards and Procedures Manual will be available in electronic media format (MS Word or approved alternative), with normal document and text features, such as machine searches on key words and phrases. All production migration procedures shall be included or reported in the Data Center Standards and Procedures Manual.</p>	<p>CONTRACTOR will include this detail in the Data Center Standards and Procedures Manual.</p>
O.	<p>The Contractor shall provide policies and procedures for security, including the management structure as well as the development, implementation, monitoring, evaluation, modification, and documentation of strategies for security management, as a part of the Data Standards and Procedures Manual.</p>	<p>CONTRACTOR will include this detail in the Data Center Standards and Procedures Manual.</p>

Systems Programming Support

P.	<p>Contractors opting for the contractor-hosted option will provide the necessary and requisite systems programming support required to keep the specified operating environments and application code functioning in good order.</p>	<p>CONTRACTOR will maintain all relevant systems programming skill sets to meet this requirement.</p>
Q.	<p>The Contractor shall keep all software on a compatible release currently supported by the applicable Contractor.</p>	<p>CONTRACTOR will provide this level of support to ensure continuity of system support.</p>
R.	<p>The Contractor will provide appropriate personnel trained in systems programming to meet the needs of the Bureau and to maintain a technologically current environment in the Bureau data center.</p>	<p>CONTRACTOR will provide this service. NIC provides yearly Technical Conferences for this explicit purpose. CONTRACTOR also continue to attend other conference and training sessions to ensure our State Partners are aware of and can take advantage of these technology advancements.</p>
S.	<p>The Contractor shall develop a Quality Assurance process to assure the development of quality programs.</p>	<p>CONTRACTOR will update and maintain the current Quality Assurance plan by scheduling regular reviews and updating as required. CONTRACTOR will also review and gain input from the BOE.</p>



Backup, Retention and Recovery Services

<p>T.</p>	<p>Contractors opting for the contractor-hosted option will perform all backup, retention, and recovery procedures for the Bureau.</p>	<p>CONTRACTOR shall provide this service in the following manner:</p> <p>Daily backups run to file server snapshots while rsync is utilized to synchronize servers with monthly and quarterly backups to BluRay media for archival purposes.</p>
<p>U.</p>	<p>The Contractor will provide a minimum of one daily backup of all active datasets and the retention of current copies of all applications software, as well as retention for extended periods as directed by the Bureau. Selected production dataset backups may be needed with greater frequency than daily. Keeping an identical mirrored system including programs, software, and operational staff in a second location may possibly meet this requirement.</p>	<p>CONTRACTOR shall provide provide this service and will continue to do so in the following manner:</p> <p>Files are synchronized between Site#1 and Site#2 on a regular basis based on their relative importance. Scanned document images, for instance, are transferred every 5-10 minutes as loads allow. Database logs transfer every 5 minutes. Still other less important files can be transferred nightly, such as non-critical software storage.</p> <p>Two-tier nightly backups of the databases are performed. One tier is comprised of a binary or disk-level backup of the entire database instance to a standby file system. Tier two consists of a per-table data export. Tier one is used to recover in a disaster recovery scenario, while tier two makes a more granular recovery available when required.</p>
<p>V.</p>	<p>The Contractor will maintain a transaction log to allow the restoration of all transactions processed since the last backup, including the option of the transmission of the transaction log to a remote site several times during the day.</p>	<p>CONTRACTOR shall provide this service and will continue to do so in the following manner:</p> <p>The transaction log is maintained by the database software. It is transmitted to Site#2 every 5 minutes.</p>



W.	The Contractor will provide a detailed plan for keeping the two data center's files synchronized providing data integrity.	<p>CONTRACTOR will synchronize data in the following manner:</p> <p>Files are synchronized between Site#1 and Site#2 on a regular basis based on their relative importance. Scanned document images, for instance, are transferred every 5-10 minutes as loads allow. Database logs transfer every 5 minutes. Still other less important files can be transferred nightly, such as non-critical software storage.</p> <p>Two-tier nightly backups of the databases are performed. One tier is comprised of a binary or disk-level backup of the entire database instance to a standby file system. Tier two consists of a per-table data export. Tier one is used to recover in a disaster recovery scenario, while tier two makes a more granular recovery available upon request.</p>
X.	The Contractor will allow the Bureau the option of downloading copies of the applications software and applicable datasets to a location it designates.	<p>CONTRACTOR will comply with this request in the following manner:</p> <p>The entire BOE dataset is burned onto a small set of discs that can be easily transported and preserved. Contents of the file system backups are moved to Blu-Ray Disc media on a quarterly basis and stored offsite at the BOE office.</p>
Y.	The Contractor will provide the same standards of processing, storage, security, access, and data integrity for the backup copies.	CONTRACTOR applies the same standards to backup copies and will continue to do so.

Security Management & Reliability

The Contractor will support the following security management requirements as agreed to by the Bureau:

Z.	The Bureau desires to maintain control of all security management functions, particularly those with a direct impact on the application software and its data. Due to confidentiality requirements of State and federal laws, statutes and ordinances, the Bureau must employ controls and establish appropriate audit trails on all operating system and application files, user and operator IDs, and network connections.	CONTRACTOR shall provide this service. CONTRACTOR will continue to be Terremark (Verizon Business) SMP Certified.
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<p>AA.</p>	<p>The Contractor shall select and maintain the data processing facilities to provide low vulnerability of the location to natural disasters, such as flooding, earthquakes, damaging winds or other destructive events.</p>	<p>CONTRACTOR addresses this through the use of commercial data center providers and by providing broad geographic separation of the backup data center. This approach supports business continuity in the event of destructive events.</p> <p>Part of the selection criteria for the CONTRACTOR datacenters at site 1 and site 2 was considering how each site evaluated possible natural disasters. Neither site is located within a flood plain. In Michigan the datacenter is a building within a building to protect against wind and water. Site 2 is a world-class datacenter protecting against all possible natural disaster scenarios.</p>
<p>BB.</p>	<p>The Contractor shall provide and maintain a data processing facility, which minimizes the possibility of fire damage.</p>	<p>Industry standard fire detection and fire suppression systems are deployed in CONTRACTORs site 1 and site 2 datacenters.</p>
<p>CC.</p>	<p>The Contractor shall prevent unauthorized persons from having physical access to the processing facilities and critical areas within the data center, to include power supply facilities.</p>	<p>CONTRACTOR shall provide and will continue to support a comprehensive physical security program that meets the State's physical access requirements. The power supply facility access is provided by the data center. CONTRACTOR shall work with the data center to provide industry standard security measures to provide continued physical access security of all facilities including power.</p>
<p>DD.</p>	<p>The Contractor shall provide controls to limit physical access to communication devices and processes.</p>	<p>CONTRACTORs datacenters have controls to limit physical access. Site#1 has card access on entry into the building and into the data room. All access times are recorded and kept on file. Site#2 has card access into the building and a card accessed turnstile into the data room. All access times are logged and kept for over a year. CONTRACTOR's datacenters remain under video surveillance.</p>
<p>EE.</p>	<p>The Contractor shall provide reliable equipment and establish maintenance practices, including preventive maintenance and maintaining on-site spares, to ensure that service interruptions are minimal.</p>	<p>Leveraging our Technology replacement plan, CONTRACTOR shall ensure their equipment continues to maintain the highest level of reliability.</p>



<p>FF.</p>	<p>The Contractor shall provide controls for system access to limit access to only personnel specifically associated with applications, both during regular operations and in emergency conditions.</p>	<p>CONTRACTOR shall provide this service and will continue to do so in the following manner:</p> <p>At Site#1, three personnel have access cards. These access cards have a photo badge and are controlled by the datacenter operations.</p> <p>At Site#2 there are two personnel with card access. The CONTRACTOR staff manages this list via a web interface. In emergency conditions other personnel can be granted temporary access.</p>
<p>GG.</p>	<p>The Contractor shall provide program and data access change controls.</p>	<p>CONTRACTOR shall provide this service by tracking and gaining BOE approval for all data access changes. All changes are logged into our ticket tracking system and assigned before any changes are made.</p>
<p>HH.</p>	<p>The Contractor shall provide security procedures for the protection of on-site and off-site application software and data storage and facilities.</p>	<p>CONTRACTOR shall provide this service through our security policies and procedures including the use of firewalls and intrusion detection, DMZ network subnetting, limited administrator-level personnel, defined backup and recovery processes and BluRay archives.</p>
<p>II.</p>	<p>The Contractor shall provide the Bureau staff access to the security logs upon request.</p>	<p>CONTRACTOR security logs are specifically the visitor access logs and the video surveillance records. Datacenter camera and physical access logs will be provided onsite only, on an as-needed basis upon request.</p>
<p>JJ.</p>	<p>The Contractor shall provide the Bureau staff training required to interrupt the security logs.</p>	<p>CONTRACTOR will provide training to the State to interpret the above security logs upon request.</p>
<p>KK.</p>	<p>The Contractor shall provide the Bureau staff a downloadable copy of the security logs in the Bureau's designated format.</p>	<p>CONTRACTOR will work with the Bureau to define a process to create a downloadable file that complies with NIC's security program, data center policies, and the Bureau's needs.</p>
<p>LL.</p>	<p>The Contractor shall provide for replacement of key personnel who become incapacitated or whose services are otherwise suddenly and unexpectedly lost within 24 hours.</p>	<p>CONTRACTOR has succession planning for key personnel and will support this requirement. In the event of an emergency replacement we will work out specific provisions with the Bureau at the time.</p>



MM.	<p>The Contractor shall provide procedures to detect and minimize the impact of hacking, security breaches, and physical damages, such as detection mechanisms, timely reactions to reduce the effect of detected problems, and recovery procedures; and to detect and prevent fraud.</p>	<p>CONTRACTOR shall provide this service and will continue to do so in the following manner: CONTRACTOR shall provide firewall and intrusion detection, as well as defined recovery procedures for BOE Site#1 and Site#2.</p>
NN.	<p>The Contractor shall maintain a log of access attempts, utilization, and down time, and provide reporting and monitoring capabilities, including: Logging to a remote and secure disk; and Providing a series of standard reports with the capability to sort on user-defined parameters or selected data, based on user-defined criteria (e.g., time period, level/type of employee, accessed programs and data, etc.).</p>	<p>CONTRACTOR shall provide this service and will continue to do so in the following manner:  CONTRACTOR shall maintain logs for web, user, and filing access. We monitor utilization and down time through software applications, which have reporting features.</p>
OO.	<p>The Contractor shall be responsible for obtaining SAS70 reports or use other tools that document management assurance of internal controls. [The American Institute of Certified Public Accountants (AICPA) developed the Statement on Auditing Standards (SAS) No. 70. An SAS70 represents a service organization or service provider that has been through an in-depth audit of their control activities, which generally include controls over information technology and related processes.]</p>	<p>CONTRACTOR will provide tools that document management assurance of internal controls. In particular NIC has annual successful audits under Sarbanes-Oxley. This assures management assurance of internal controls. Also, Contractor's payment group, NIC Services, provides all CONTRACTOR payment processing support and successfully completed a SAS70 audit for the payment processing control functions.</p>
PP.	<p>The Contractor shall develop, disseminate, and periodically review/update security awareness and training policy and procedures.</p>	<p>NIC Corporation currently provides this service to the company, CONTRACTOR is also required and will continue to attend these training sessions.</p>
QQ.	<p>The Contractor shall provide a documented policy about media destruction and disposal.</p>	<p>CONTRACTOR will create and maintain a media destruction and disposal policy.</p>
RR.	<p>The Contractor shall cooperate with the Bureau to ensure that agreed upon security levels are met.</p>	<p>CONTRACTOR shall meet or exceed expected security levels. These requirements are also required by NIC Corporate and for CONTRACTOR to maintain Terremark (Verizon Business) SMP Certification  Refer to # "I" above.</p>
SS.	<p>The Contractor will ensure the systems security at the Secondary Production Site performs at the same level as that required for Contractor's Primary Production Site.</p>	<p>CONTRACTOR follows generally accepted commercial policies and practices for security. These practices are independently reviewed and certified by the Terremark Security Management Program. We will continue to apply these policies at both the primary and secondary sites.</p>



**Appendix C - Organizational Chart**

Figure 1: NIC Technologies Organizational Chart

