

THE CHARTER COUNTY OF WAYNE, MICHIGAN

REQUEST FOR PROPOSALS FOR DEPUTY EDUCATION PROGRAM (DEP) - ONLINE TRAINING SERVICES

CONTROL NO. 37-09-146

Issue Date: Friday, May 29, 2009

Pre-Proposal Question Deadline: Wednesday, June 10, 2009 at 4:00 p.m. local time

Pre-Proposal Conference: N/A

Proposal Deadline: **Tuesday, June 23, 2009 at 4:00 p.m. local time**
Charter County of Wayne
Purchasing Division
600 Randolph, Room 146
Detroit, Michigan 48226

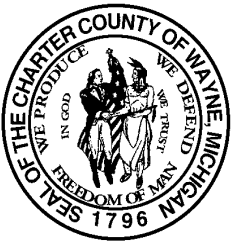
Purchasing Contact: Renee Marsh, Department Executive
Phone: (313) 224-5151
Fax: (313) 224-5182
Email: rmash@co.wayne.mi.us

Description: The County of Wayne is requesting proposals for the purpose of providing a turnkey online Learning Management System and course development service for the Wayne County Sheriff's Office.

A copy of this RFP can be obtained from the Wayne County Purchasing website at <http://www.waynecounty.com/mygovt/mb/proposals/proposals.aspx>. Until the expiration date of this solicitation, it is incumbent upon the Proposer to check the website for additional information and/or addendums. RFPs can also be obtained from the Wayne County Purchasing Division, 600 Randolph Street - Room 146, Detroit, Michigan 48226-2831. If you have any questions, please call (313) 224-5151.

Written questions regarding the substance of the RFP or scope of services must be submitted via e-mail to the purchasing contact listed above no later than the Pre-Proposal Question Deadline indicated above.

Sealed Proposals are due prior to the Proposal Deadline indicated above and must be delivered to the Purchasing Division, located at 600 Randolph, Room 146, Detroit, Michigan 48226. Late proposals will not be accepted – NO EXCEPTIONS.



Robert A. Ficano
County Executive

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SECTION 1 - INSTRUCTIONS

- 1) **COMMUNICATIONS:** In an effort to create a more competitive and unbiased procurement process, the County desires to establish a single point of contact throughout the procurement process. From the issue date of this proposal, until a Successful Proposer is selected, all requests for clarification or additional information regarding this RFP, or contacts with the County personnel concerning this RFP or the evaluation process must be solely to the contact person listed on the cover page of this RFP.

A violation of this provision is cause for the County to reject the Proposer's proposal. If it is later discovered that a violation has occurred, the County may reject any proposal or terminate any contract awarded pursuant to this RFP. No contact regarding this document with other County employees is permitted.

- 2) **PRE-PROPOSAL INFORMATION AND QUESTIONS:** Each proposal that is timely received will be evaluated on its merit and completeness of all requested information. In preparing proposals, Proposers are advised to rely only upon the contents of this RFP and accompanying documents and any written clarifications or addenda issued by the County. If a Proposer finds a discrepancy, error, or omission in the proposal package, or requires any written addendum thereto, the Proposer is requested to notify the Purchasing Contact noted on the cover of this RFP, so that written clarification may be sent to all prospective Proposers. The County is not responsible for oral representations. All questions must be submitted in writing to the Purchasing Contact only before the Pre-Proposal Question Deadline indicated on the front of this document. All answers will be issued in the form of a written addendum.

- 3) **RFP MODIFICATIONS:** Clarifications, modifications, or amendments may be made to the RFP at any time prior to the Proposal Deadline at the discretion of the County. It is the Proposer's responsibility to periodically check the County's website until the posted Proposal Deadline to obtain any issued addenda.

- 4) **PRE-PROPOSAL MEETING:** Not Applicable

- 5) **PROPOSAL SUBMISSION:** To be considered, the proposal must be prepared in the manner and detail specified in this proposal.

- a. Proposals must be submitted to the Wayne County Purchasing Division, 600 Randolph, Room 146, Detroit, Michigan 48226, before the date and time indicated as the deadline. It is each Proposer's responsibility to insure that the Purchasing Division receives its proposal prior to the deadline. This responsibility rests entirely with the Proposer, regardless of delays resulting from postal handling or for any other reasons. Proposals will be accepted at any time during the normal course of business only, said hours being 8:00 a.m. to 4:00 p.m. local time, Monday through Friday, except for legal holidays.
- b. Proposals received after the above deadline will not be accepted and will be returned to the Proposer unopened. The Purchasing Division's timestamp shall be the official time.
- c. The opening of a proposal does not constitute the County's acceptance of the Proposer as a responsive and responsible Proposer.
- d. Proposals must be enclosed in a sealed envelope, box, or package, and clearly marked on the outside with the following: Project name, Control Number, Deadline date and time, and Proposer's name, address, phone, fax, and contact name. If the Proposer believes that any information submitted is confidential, such information shall be separately sealed and labeled as confidential. Proposals are subject to public disclosure after the deadline for opening in accordance with state law.
- e. Submission of a proposal establishes a conclusive presumption that the Proposer is thoroughly familiar with the RFP and specifications and terms of the Form of Contract, and the County's Procurement Ordinance and that the Proposer understands and agrees to abide by each and all of the stipulations and requirements contained therein.
- f. All prices and notations must be typed or printed in ink. No erasures are permitted. Mistakes may be crossed out and the person(s) signing the proposal must initial corrections in ink.

- g. Proposals sent by telegraph, facsimile, or other electronic means will not be considered.
- h. All costs incurred in the preparation and presentations of the proposal, as well as any resulting contract, are the Proposer's sole responsibility; no proposal costs will be reimbursed to any Proposer. All documentation submitted with the proposal will become the property of the County.

6) **PROPOSAL GUARANTEE:** Not Applicable.

7) **PROPOSAL SIGNATURES:** An authorized official must sign the proposal. Each signature represents binding commitment upon the Proposer to provide the goods and/or services offered to the County if the Proposer is determined to be the most responsive and responsible Proposer.

8) **CONTRACT AWARD:** The County reserves the right to withdraw the RFP, to award to one Proposer, to any combination of Proposers, by item, group of items, or total proposal. The County may waive informalities if it is in the County's interest. The Proposer to whom the award is made will be notified at the earliest possible date. Tentative acceptance of the proposal, intent to recommend award of a contract and actual award of the contract will be provided by written notice sent to the Proposer at the address designated in the proposal. All proposals must be for a firm fixed price unless modified. If, for any reason, a contract is not executed with the selected Proposer within 14 days after notice of recommended award, then the County may recommend the next most responsive and responsible Proposer. Award of this proposal is contingent upon the availability of funds for this project, within the sole discretion of the County. Acceptance of the Proposer's proposal does not constitute a binding contract. There is no contract until the County's policies have been fulfilled. The County is not liable for performance costs until the successful Proposer has been given a fully executed contract. Failure to accept the terms and conditions of the County's Standard Contract may deem the Proposer non-responsive.

9) **PROPOSAL MODIFICATIONS:** Clarifications, modifications, or amendments to any proposal that has been submitted, but prior to the proposal Deadline Date, may be made only within the discretion and written approval of the Purchasing Director.

10) **DUPLICATE PROPOSALS:** No more than one (1) proposal from any Proposer, including its subsidiaries, affiliated companies and franchisees will be considered by the County. In the event multiple proposals are submitted in violation of this provision, the County will have the right to determine which proposal will be considered, or at its sole option, reject all such multiple proposals.

11) **WITHDRAWAL:** Proposals may only be withdrawn by written notice prior to the Deadline date set for the opening of proposal. No proposal may be withdrawn after the deadline for submission.

12) **REJECTION:** The County reserves the right to reject any or all proposals, or to accept or reject any proposal in part, and to waive any minor informality or irregularity in proposals received, if it is determined by the Purchasing Director or designee that the best interest of the County will be served by doing so. The County may reject any proposal from any person, firm or corporation in arrears or in default to the County on any contract, debt, or other obligation, or if the Proposer is debarred by the County from consideration for a contract award, or if Proposer has committed a violation of the ethics or anti-kickback provisions of the County's Procurement Ordinance which resulted in a termination of a contract or other material sanction within the two (2) years immediately preceding the date of issuance of this document.

13) **PROCUREMENT POLICY:** Procurement for the County will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the County. The Chief Executive Officer has the vested authority to execute all County contracts, subject to Commission approval where required.

14) **COMPLIANCE WITH LAWS:** The Proposer must comply with all federal, state, and local laws and policies including, but not limited to:

- i. The provisions of the Wayne County Procurement Ordinance governing "Ethics in Public Contracting", as applicable to contractors, being Article 12 of Chapter 120, and Contractor agrees to provide all required disclosures;

- ii. The Michigan Civil Rights Act;
- iii. The Persons With Disabilities Act;
- iv. The Age Discrimination Act;
- v. Section 504 of the Rehabilitation Act;
- vi. The Living Wage Ordinance;
- vii. The Slavery Era Disclosure Ordinance;
- viii. The Fair Employment Practices of the Equal Contracting Opportunities Ordinances.

- 15) NON-DISCRIMINATION:** Wayne County will not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance. The Proposer must comply with all federal, state and local laws and policies that prohibit discrimination in employment contracts. The anti-discrimination policies of the Wayne County Procurement Ordinance, Article XI of Chapter 120 of the Wayne County Code, are incorporated into County contracts. The Proposer must include in its subcontracts provisions that prohibit subcontractors from discriminating in their employment practices.
- 16) NO PROPOSAL RESPONSE:** Businesses who receive this RFP but who do not submit a proposal should return a notice stating the reason(s) for not responding. Failure to return this may result in removal of the business' name from all bidder lists.
- 17) CONTRACT NEGOTIATION:** All proposals must be firm for at least 120 days from the due date of the proposal. If, for any reason, a contract is not executed with the selected Proposer within 14 days after notice of recommended award, then the County may recommend the next most responsive and responsible Proposer. There is no contract until the County's policies have been fulfilled.
- 18) DISQUALIFICATION OF RESPONDENTS:** Any one or more of the following causes may be considered sufficient for the disqualification of a Proposer and the rejection of the Proposal:
- a. Evidence of collusion among Proposers.
 - b. Lack of competency as revealed by either financial, experience, or equipment statements.
 - c. Lack of responsibility as shown by past work.
 - d. Uncompleted work under other contracts which, in the judgment of the County, might hinder or prevent the prompt completion of additional work if awarded.
- 19) DISCUSSIONS:** Discussions may be conducted with responsible Proposers, in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Discussions may be conducted with Proposers who submit Proposals determined to be reasonably susceptible of being elected for award, but Responses may be accepted without such discussions.

Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of Proposals. Such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. The Proposer shall reduce any substantial oral clarification of Proposals to writing.

- 20) SUBCONTRACTORS:** In an effort to promote supplier diversity, Wayne County encourages Proposers to identify and include qualified minority businesses as subcontractors when proposing to provide products and services to the County. Proposers must reasonably demonstrate that they have taken all the necessary steps to include participation from diverse suppliers.

If the Proposer's team is composed of a prime Consultant with Subcontractors, the Subcontractors must remain exclusive to the prime described in the proposal until the end of the specific proposal period and may not partner with more than one prime for the purposes of the responsive proposal. The total exclusive time will be 120 days from the proposal due date.

The Contract will not be assignable to any other business entity without the County's approval. Proposers are encouraged to consider a joint venture.

21) PROPOSER RESPONSIBILITIES: The Proposer must be capable, either as a firm or a team, of providing all services as described under SECTION 2 – SCOPE OF WORK and to maintain those capabilities until notification of the fact that their proposal was unsuccessful. Exclusion of any service for this proposal may serve as cause for rejection. The selected Proposer must remain capable of providing all services as described under SECTION 2 – SCOPE OF WORK and must maintain those capabilities until the agreement is successfully finished. The successful Proposer will be responsible for all Services in this proposal whether they are provided or performed by the Successful Proposer or Subcontractor(s). Further, the County will consider the Successful Proposer to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the cost of any contract. The Successful Proposer must identify all Subcontractors and the Services they provide. The Successful Proposer is responsible for all payments and liabilities of all Subcontractor(s).

The County reserves the right to approve or reject, in writing, any proposed Subcontractor. If the County rejects any proposed Subcontractor in writing, the Successful Proposer shall be responsible to assume the proposed Subcontractor's responsibilities. The Successful Proposer may propose another Subcontractor if it does not jeopardize the effectiveness or efficiency of the contract. Nothing contained in the proposal or in the contract shall create or be construed as creating any contractual relationship between any Subcontractor and the County.

22) COUNTY PARTICIPATION: The County will provide appropriate personnel support for implementation of these agreements. The Proposer's proposal should identify County FTEs required and tasks to be performed by County personnel. For the purpose of contract administration, Wayne County will designate a person to serve as County Contract Manager. The County Contract Manager will serve as the primary liaison between the County and the Successful Proposer and will coordinate overall management and administration of the contract for the County.

23) DISCLOSURE OF CONTENTS: All information provided in the proposal shall be held in confidence and shall not be revealed or discussed with competitors, until after award of the contract except as provided by law or court decision. All material submitted with the proposal becomes the property of the County and may be returned only at the County's option.

Proposers must make no other distribution of their proposals other than authorized by this RFP. A Proposer who shares cost information contained in its proposal with other County personnel or competing Proposer personnel shall be subject to disqualification.

Proposers shall not be provided any information about other proposals or prices or where the Proposer stands in relation to others at any time during the evaluation process. Any request for such information by a Proposer, its subcontractor or an affiliated party may be viewed as a compromise to the evaluation process and the requesting Proposer may be eliminated from further consideration.

Responses are subject to public disclosure after the deadline for submission in accordance to state law under the Freedom of Information Act (FOIA).

SECTION 2 - SPECIFICATIONS AND SCOPE OF WORK

1) INTRODUCTION: Through this Request for Proposals (RFP), the Charter County of Wayne (County) hereby invites businesses who meet the qualifications and specifications set forth herein to submit proposals to provide the Wayne County Sheriff's Office (WCSO) job related training utilizing custom courseware that is delivered by a Learning Management System over an internal intranet.

2) MINIMUM QUALIFICATIONS: Proposers (specifically, the business that will be contractually bound under the contract with the County) will be deemed non-responsible and rejected without any further evaluation if they or their key personnel do not meet the following mandatory qualifications:

- 2.1** Have ten (10) or more years experience in developing computer-based training for adult audiences.
- 2.2** Have five (5) or more years experience in developing web-based training for adult audiences.
- 2.3** Have five (5) or more years experience in developing web-based training for Learning Management Systems
- 2.4** Have two or more Instructional Systems Designers, to be assigned to this contract, each with a minimum of ten (10) or more years experience each in the design of adult oriented training courseware.
- 2.5** Have one or more Course Developers, to be assigned to this contract, with ten (10) or more years of experience in the authoring of adult oriented training courseware.
- 2.6** Have one or more Application Developers, to be assigned to this contract, with ten (10) or more years of experience in developing and supporting Learning Management Systems.
- 2.7** Must be an approved MCOLES vendor for distance learning.

3) PREFERRED QUALIFICATIONS: The Proposer may be evaluated higher if they meet the following qualifications:

- 3.1** Have implemented 3 or more web based training systems for large organization (1000 or more employees).
- 3.2** Have a Learning Management System that has been installed and is currently in use in a large (1000 or more employees) organization.
- 3.3** Have Employee Instructional Designers with a graduate degree in the field of Education with a specialty in Instructional Design that will be assigned to this contract.

4) SCOPE OF SERVICES:

4.1 General: The WCSO desires to contract for the training as a monthly service. This project will provide the WCSO personnel with a 7-day/24 hour access to training. The courses will be developed to meet WCSO requirements. The average expected delivery rate is estimated at three (3) courses per month, and if required by the WCSO, the course must be approved by MCOLE or the Michigan Sheriff's Coordinated Training Council. It is expected that the implementation will be completed within 60 days of contract award. The number of courses to be developed each year will be determined by the Wayne County Sheriff's Office based on need and resource availability.

4.2 Training Platform: The server that delivers the courseware must be owned, installed, and maintained by the Contractor. The Learning Management System must be owned, installed and maintained by the Contractor. The server must be installed within the existing Wayne County computer network behind the existing firewall.

4.3 Training Requirements: Michigan Sheriff's Training Council rules require all police officers to have at least 20 hours of training each year. Those working in the Jails must have at least 24 hours of training each year. Twenty of those hours may be the same as the Michigan Sheriff's Training Council required hours.

The Wayne County Sheriff's Office has approximately 813 police officer positions (some may be vacant and unfilled) at the Jails, and, 287 positions (some may be vacant and unfilled) assigned to other Sheriff functions. The County makes no guarantee regarding the minimum number of police officers who will be trained during the term of this contract. The average number of officers to be trained is estimated at 1,000.

4.4 Course Development: Note, the County reserves the right to determine the maximum number of hours to be paid for each course developed. The vendor will submit a course development outline with hours to complete. The County will approve such and the number of hours for course development may not exceed the maximum unless agreed to in advance by Wayne County.

The courses will be developed to meet WCSO requirements. The expected delivery rate is a minimum of three (3) courses per month, and if required by the WCSO, the courses must be approved by MCOLE or the Michigan Sheriff's Coordinated Training Council. It is expected that the implementation will be completed within 60 days of contract award. The proposal shall not be based on a minimum of three courses per month. The number of courses to be developed each year will be determined by the Wayne County Sheriff's Office based on need and resource availability.

The specific courses may include but not limited to, harassment in the workplace, Red Cross AED basics, Red Cross CPR basics, Red Cross First Aid, Law Enforcement Legal Update, Standards of Conduct, Suicide Prevention, and Fire Safety, Emergency Management. An additional training component of at least one hour of seat time of one or more courses per month, and, equivalent to 24 hours of classroom time per year (which is mandated by State of Michigan).

4.5 Course Maintenance and Support: Contractor shall provide course maintenance and support for each course utilized by the Wayne County Sheriff's Office. Annual course maintenance shall be priced to include all costs associated with maintenance and support for each course utilized. If a course is developed and the County determines it will no longer use such course, the vendor will not be paid for maintenance of a course no longer in use.

4.6 Learning Management System Support: Contractor shall provide implementation, management, support and service of the Learning Management System for the Wayne County Sheriff's Office, and, implementation, management, and service of the server hardware and all services and support associated with Learning Management System.

4.7 Video Messaging: Provide three (3) video messages per month acquired with 1080i HD broadcast quality video and edited to specification required.

See Section 3 – Detailed Scope of Services for more information.

6) SPECIFICATIONS: See Section 4 – Detailed Specifications.

7) CONTRACT TERM: The contract is for a term of three (3) years, with a two-year renewal option, if mutually agreed upon. It is anticipated that this contract will commence on or before July 1, 2009.

SECTION 3 – DETAILED SCOPE OF SERVICES

Installation – Learning Management System Server

The Contractor will:

1. Provide all necessary services to install the LMS Server. This will be referred to as the Production Server.
2. Test the server after it is installed at the chosen Wayne County Sheriff's Office location.

Support – Learning Management System Server

The Contractor will:

1. Provide on-site support for issues relating to the functionality of the LMS Server.
2. Provide on-site assistance, at the discretion of the Wayne County Sheriff Office, within two hours of being notified of an LMS Server issue.

Installation – Learning Management System Software

The Contractor will:

1. Provide all necessary services to install the LMS software on the server.
2. Test the LMS functionality after the server is installed at the chosen Wayne County Sheriff's Office location.
3. Install all courseware on the LMS.
4. Test each course as it is installed to insure it functions as proposed.

Support – Learning Management System Software

The Contractor will:

1. Provide on-site support for issues relating to the functionality of the LMS software.
2. Provide on-site assistance, at the discretion of the Wayne County Sheriff's Office, within two hours of being notified of an LMS software issue.
3. Install all courses on the LMS.
4. Test each course to verify that the course functions as proposed.
5. Backup server database and courseware on a regular basis.

Support – Course Development

The Contractor will:

1. The Contractor will provide a Testing Server and Learning Management System that duplicates the functionality of the Wayne County Sheriff's Office LMS. This Testing Server will not be installed on the Wayne County network and must be available from the Internet. The Testing Server must provide a secure sign on for testing.
2. Install all courses on the Testing Server for the purpose of evaluation and testing prior to installing the courses on the Production Server.
3. Provide support to the Wayne County Training Unit in accessing and evaluating courses.

Production of Monthly Video-based communications

The Contractor will:

1. Tape, edit, encode, and post to the Learning Management System up to three (3) video messages of approximately three (3) minutes each.
2. The Contractor will produce the video messages using 1080i HD Video at broadcast standard quality.

Publish Media Clips

The Contractor will:

1. Work with external sources to publish up to five (5) media clips per month.
 - a. Encode video for delivery on the Learning Management System
 - b. Publish the video on the Learning Management System.

SECTION 4 – DETAILED SPECIFICATIONS

Software - Learning Management System

The Learning Management System must meet the following requirements:

1. Integrate with Wayne County's information infrastructure and security requirements.
2. Hosted on a Microsoft Windows Server 2003 or higher operating system.

The Learning Management System must provide the following functionality:

1. User Access to LMS
 - 1.1. User sign on to the Learning Management System.
 - 1.1.1. The LMS must utilize the existing Wayne County network authentication capabilities to verify a user's rights to access the LMS.
 - 1.1.2. The LMS must utilize the Wayne County user identifier to track users' learning records.
2. User Tracking
 - 2.1. Each course that a user is taking will be tracked.
 - 2.2. A history of all course completions will be maintained.
 - 2.3. For each course a user takes, the following will be tracked:
 - 2.3.1. Pretest score.
 - 2.3.2. Pretest completion date.
 - 2.3.3. Module completion date based upon successful posttest completion.
 - 2.3.4. Score of first posttest attempt.
 - 2.3.5. Score of posttest attempt that completed the requirements.
 - 2.3.6. Number of attempts at the posttest.
 - 2.4. Completion status and course review
 - 2.4.1. A visual indicator of the course completion status must be shown whenever a student views the catalog entry for a course.
 - 2.4.2. If the student has successfully completed the course, they must be allowed to review any of the modules, but they must not be allowed to review or retake the pretest or posttest after successfully completing the course.
 - 2.4.3. The date of completion will be displayed for the user.
 - 2.4.4. The user must complete a Course Evaluation questionnaire before credit will be given for the course.
3. Course Security and Access levels
 - 3.1. Up to nine (9) levels of hierarchical security levels must be utilized.
 - 3.2. A security level must be assigned to each user.
 - 3.3. A security level must be assigned to each course.
 - 3.4. A user is restricted to only taking and viewing courses and/or content that are at or below their assigned security level.
4. Course Sequencing
 - 4.1. A course may have a prerequisite course that must be completed before the user can take the course.
5. Module Sequencing
 - 5.1. Modules may or may not be required to be taken in sequence.
 - 5.2. If module sequencing is required, then each module must be completed before the next module can be taken.
6. Mandatory courses

- 6.1. A course may be required to be retaken on a periodic basis such as every one, two, or three years.
- 6.2. The LMS must track the completion status and allow the student to retake the course based upon the retake parameters.
7. Required courses
 - 7.1. Each job classification may have a set of courses that must be completed by any user within the job classification.
 - 7.2. The user must be able to view a catalog that contains only the required courses for their job classification.
 - 7.3. The completion status of the courses must be shown so the user can visually check their progress.
8. Retake Module based upon number of posttest attempts
 - 8.1. If required, a course may be set to require the user to retake the course based upon the number of failed attempts at the posttest.
9. Course Catalog
 - 9.1. A user will be able to view a course catalog that shows:
 - 9.1.1. All courses that meet the user's security level.
 - 9.1.2. A description of the course.
 - 9.1.3. The module(s) that comprise the course.
 - 9.1.4. The users completion status, if applicable, for each course.
 - 9.2. The user must be able to add the course to their list of assignments from the course catalog.
10. User To Do List
 - 10.1. A user will be able to view a list of courses that the user has begun taking, but has not completed.
 - 10.2. As a course is completed, the course is removed from the To Do List.
11. User Communications
 - 11.1. The Wayne County Sheriff's Office will be able to post communications to users in any form of digital communication.
 - 11.2. Each communication will be tagged with a security level. This security level will be the same as for the courses.
 - 11.3. A user will be able to view only communications that are at or below their security level
 - 11.4. If a user views a communication, then a record will be kept showing which communication was viewed, by whom, and on what date.
 - 11.5. The home page of the LMS will indicate that a communication has been posted.
12. Administration
 - 12.1. Based upon a user's security level, the user must have access to an administration that will allow the user to view information about:
 - 12.1.1. Users.
 - 12.1.2. Courses.
 - 12.1.3. User Progress.
 - 12.1.4. User Training Records.
 - 12.2. Based upon a user's security level, the user must be able to manage the User Communications.
 - 12.2.1. Add, update, and delete new communications on the LMS server.
 - 12.2.2. Delete communications.
 - 12.2.3. Monitor user access to the communications.

Courseware Development

1. Development Standards

1.1. Development Methodology

- 1.1.1. All courses will be developed using an accepted Instructional Systems Design methodology with the following interim deliverables:
 - 1.1.1.1. Content outline or content flow that describes the learning architecture in either Microsoft Word or PowerPoint formats.
 - 1.1.1.2. Scripted storyboards in Microsoft PowerPoint format.
 - 1.1.1.3. Alpha version of course.
 - 1.1.1.4. Beta version based upon client reviews of alpha version.
 - 1.1.1.5. Final version.

2. Course reviews

- 2.1. The Wayne County Sheriff's Office reviews of each course must be delivered in the same context that the students will view the course. A separate review site must be provided that utilizes the same Learning Management System so that reviews can be made from the review site.
- 2.2. The Wayne County Sheriff's Office will have at least two storyboard reviews before incurring any out of scope charges
- 2.3. The Wayne County Sheriff's Office will have at least two beta reviews before incurring any out of scope charges

3. Course Structure

3.1. Pretest

- 3.1.0. Each course may have a Pretest that tests the users entry-level knowledge of the course objectives.
- 3.1.1. Courses must have the option of not requiring a Pretest.
- 3.1.2. A user may take the Pretest only once.
- 3.1.3. The Pretest score is not reported to the user.
- 3.1.4. The answers to Pretest questions are not given to users.
- 3.1.5. The Pretest questions must be presented to the user in a random order.

3.2. Course Module(s)

- 3.2.0. A course will consist of one or more modules.
- 3.2.1. At the discretion of the Wayne County Sheriff's Office, the first module of a course may have a video introduction that features the Wayne County Sheriff or their designated substitute.
- 3.2.2. The modules cannot be taken until the Pretest has been completed.
- 3.2.3. The target seat time for each module will be 15 minutes or less.
- 3.2.4. The modules may or may not be required to be taken in a specific sequence.

3.3. Posttest

- 3.3.0. Each course will have a Posttest that tests the users' knowledge, skills, and aptitude as required by the course learning objectives.
- 3.3.1. The Posttest may only be taken after the user has completed all modules.
- 3.3.2. The Posttest questions must be presented to the users in a random order from a pool of questions.
- 3.3.3. The number of times a user can take a Posttest before being required to retake the modules is variable. If this requirement is set for a Posttest, then the user will be required to take all modules before being able to retake the Posttest.

3.4. Course Navigation

3.4.0. All courses will use the following navigation controls on each page:

- 3.4.0.1. Next – advances to the next page.
- 3.4.0.2. Back – returns to the previous page.
- 3.4.0.3. Home – takes the user to the first page of the module.
- 3.4.0.4. Save and Exit – exits the module and supplies bookmarking information to the Learning Management System.
- 3.4.0.5. Audio On/Off – turns the playing of the narration for all subsequent pages on or off.

3.5. Course Interactivity

- 3.5.0. Embedded questions or other learning exercises must be presented every five to seven screens within each module.

3.6. Media Assets

3.6.0. Photos

- 3.6.0.1. When original photographs are created for a course, Wayne County Sheriff's Office personnel and Wayne County locations must be utilized.

3.6.1. Graphics

- 3.6.1.1. When original graphics are created for a course, they must be consistent with any other graphic assets used within the course.

3.6.2. Video

- 3.6.2.1. All video utilized in the course must be created to network broadcast standards. If required by WCSO, all courses should have at least two (2) 30 TO 60 second video messages / objectives, with audio. Their acquisition will be in the HD, 1080i professional broadcast format.
- 3.6.2.2. All video utilized in the course must be compressed using either Microsoft Media player version 9 (or later) or Adobe Flash version 8 (or later).

3.6.3. Audio

- 3.6.3.1. All audio utilized in the course must be created to network broadcast standards.
- 3.6.3.2. All audio utilized in the course must be compressed using either MP3 or Flash compression standards.

3.6.4. Course Branding

- 3.6.4.1. Each course must be branded with the Wayne County Sheriff's Office logo.
- 3.6.4.2. Each course will have the same or a similar look-and-feel using the same font families, color palettes, navigational standards, etc.

3.6.5. Authoring Tools

- 3.6.5.1. The course must be authored using standard technologies such as HTML, Microsoft Windows Media, Flash, MP3 audio.

SECTION 5 - EVALUATION CRITERIA AND SUBMITTAL REQUIREMENTS

- 1) **EVALUATION:** All proposals received will be evaluated by an Evaluation Committee comprising of County representatives. The following factors, listed in relative order of importance, will be considered in making the selection:

- Qualifications and Similar Experience
- Technical and Service Solution
- Timeline
- Proposed solution cost.

- a) Each proposal submitted in response to this RFP shall focus on the above criteria. The Evaluation Committee also may consider past performance of the Proposer on other contracts with the County or other entities. Proposals will be evaluated equally and fairly; no preference will be given to any Proposer based solely on previous experience with the County or to an incumbent thereof. The County reserves the right to make additional inquiries and may request the submission of additional information.

- b) **COUNTY-BASED ENTERPRISE (AND OTHER) ADVANTAGE PROGRAMS:** Wayne County administers a program that gives a pricing advantage to businesses located within Wayne County that are County-Based Enterprises (CBE). Additional advantage is also given if the business is located within the 10 Targeted Growth Communities within Wayne County (Detroit, Ecorse, Hamtramck, Highland Park, Inkster, Melvindale, River Rouge, Romulus, Sumpter Township, and Taylor). The County shall apply credit up to 5% to the pricing points for Proposals submitted by certified County-Based Enterprises and 2% for TGCE. Wayne County also administers a Small Business program, an expanding business program, a Joint Venture program and a Mentor Venture program. To receive the applicable credit for any program, the Proposer and all first tier subcontractors must submit their certificates with the Proposal. (NOTE: Most federal and state funded projects will not include the application of geographic advantages such as the CBE and TGCE in accordance with funding requirements.) If you are not certified, contact the office of Human Relations at (313) 224-5021, or visit the County's website, www.waynecounty.com.

2) GENERAL SUBMITTAL REQUIREMENTS:

- a) **NUMBER OF COPIES:** One original, plus eight copies (nine total) of the entire proposal must be submitted. The original must be marked "ORIGINAL". Each copy must be identical to the original. The Proposals must be in labeled 3 ring binders.
- b) **PROPOSAL FORMAT:** Each proposal should be prepared simply and economically. Responses shall be in the same order as the requirements listed below and in the following section.
- c) **PROPOSAL CONTENT:** The Proposer must include the following items, or the proposal may be deemed non-responsive and rejected without any further evaluation (unless otherwise indicated herein):
- i) All forms contained or listed in Section 7 in this RFP, fully completed:
 - ii) Evidence showing that the Proposer meets each of the Minimum Qualifications listed in the Scope of Work of this RFP. (See next section for more detail.)
 - iii) A complete response to each of the items in the next section, which are specific to the evaluation criteria. (See next section for more detail.)

3) SUBMITTAL REQUIREMENTS SPECIFIC TO EVALUATION CRITERIA: Submit a complete response to each of the following items. List them in the order below, following your submission to the above:

A) Qualifications and Similar Experience

- 1) Provide a detailed Company Profile. Include the following:
 - (1) Date organized to provide distance learning training;
 - (2) Corporate background and depth of support, including description of parent company, if any.
 - (3) Number of employees
 - (4) Number of years doing business
- 2) Describe current contracts or business with other entities. Include:
 - (1) Client
 - (2) Date of original contract
 - (3) Type/size
 - (4) Accreditations and certifications by state or federal agencies or boards
- 3) Describe how you meet or exceed the minimum qualifications in the Specifications and Scope of Work in this document.
- 4) Describe how you meet or exceed the preferred qualifications in the Specifications and Scope of Work in this document.
- 5) Provide at least three (3) references for similar projects, including name of establishment, address, dates of service, contact name and telephone number. Provide a brief description for each project to show how it is similar. Clearly indicate for the projects on which, if any, of the proposed key personnel worked on each.
- 6) Describe the experience and qualifications of key personnel. Include detailed resumes.

B) Technical and Service Solution

- 1) Provide a detailed response to the requirements in each line item in the Section 3 – Detailed Scope of Services that indicates your ability to meet the stated service requirement.
- 2) Provide a detailed response to each line item in the Section 4 – Detailed Specifications that indicates your solutions ability to meet the stated requirements.
- 3) Provide sample training module screens that of reflect a training module for law enforcement (example can include CPR, first aid, fire safety, etc).

C) Implementation Plan

- 1) Provide a timeline for the implementation of the system that includes server installation, installation of the Learning Management System on the server, installation of the first three (3) required courses (example courses may include: Red Cross AED basics, Red Cross CPR basics, Red Cross First Aid), and integration into the Wayne County network within 60 days of contract award.
- 2) Provide detailed work plan including actions steps for implementation of the training programs.

D) Price

- 1) Complete the enclosed price sheet.

E) Evaluation Credits:

- i) Provide a County Based Enterprise, Targeted Growth Community Enterprise, or other Wayne County Advantage program certificate (see Section 5 item 1) b) if you have one; otherwise it will not be considered during the evaluation.

4) EXCEPTIONS: Proposer shall clearly identify any proposed deviations from the language contained herein. Each exception must be clearly defined and referenced to the proper paragraph in this RFP. The exception shall include, at a minimum, the Proposer's proposed substitute language and opinion as

to why the suggested substitution will provide equivalent or better service and performance. If no exceptions are noted in the Proposer's proposal, the County will assume complete conformance with this specification and the successful Proposer will be required to perform accordingly. Proposals not meeting all requirements may be rejected. Proposals taking exception to any language in the Form of Contract may be rejected as nonresponsive.

- 5) **SHORTLISTING:** The County may shortlist the Proposers based upon responses to the above items. If necessary, the County will conduct interviews/demonstrations. The County will notify each Proposer on the shortlist, if such presentation is required. These presentations will provide an opportunity for the Proposers to respond to questions posed by the evaluation committee and to clarify their proposals through exhibition and discussion. The County will not reimburse oral presentation costs of any Proposer.

SECTION 6 – SAMPLE FORM OF CONTRACT

SUBSTANTIAL FORM OF SOFTWARE LICENSE EQUIPMENT ACQUISITION AND SERVICES CONTRACT

THIS SOFTWARE LICENSE, EQUIPMENT ACQUISITION, AND SERVICES CONTRACT ("Contract") is between the County of Wayne, a body corporate and Charter County, acting through its Department of Technology (the "County") and _____, a _____ Corporation, (the "Contractor").

1. PURPOSE

1.01 The County desires _____.

1.02 The County desires to contract with a vendor who can provide personal computer hardware, printers, software, peripheral devices, supplies, and network hardware in a cost effective and timely basis.

1.03 The Contractor is experienced and able to perform technical and professional services. The Contractor desires to provide these services to the County.

2. ENGAGEMENT OF CONTRACTOR

2.01 The County engages the Contractor and the Contractor agrees to faithfully and diligently perform the services according to the terms and conditions contained in this Contract, the County's Request for Proposals, No. _____, and the Contractor's response to the Request For Proposals, and consistent with the standard of practice in the industry. If there is any conflict or inconsistency or contradiction among terms of the documents, the order of precedence is: this Contract, the County's Request For Proposals, then the Contractor's response to the Request For Proposals.

3. DEFINITION OF TERMS

Terms used throughout this Contract shall have the definitions set forth below.

3.01 "Acceptance" shall mean a written notice from the County to the Contractor that the Equipment has passed its Acceptance Testing.

3.02 "Acceptance Date" shall mean the date upon which County accepts the Equipment as provided in the section titled Standard of Performance and Acceptance.

3.03 "Acceptance Testing" shall mean the standards to be met by the Equipment prior to Acceptance by the County, as set forth in the section titled Standard of Performance and Acceptance.

3.04 "Business Days and Hours" shall mean Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Standard Time, except for holidays observed by the County of Wayne.

3.05 Change Order. A written order signed and issued by the Purchasing Director and also by any other officer authorized to sign and issue the original Contract, directing the Contractor to make changes which the "Changes in Scope/Services" Article of this Contract authorizes the County to order without consent of the Contractor.

3.06 Contract/Contract Documents. The written agreement covering performance of the Services, as provided in the specifications. The Contract shall include the bid documents, performance bond, payment bond, standard specifications, supplemental specifications, general and detailed plans, all supplemental agreements entered into, and all general or special conditions pertaining to the Services or materials provided, and shall be in force until the Services provided pursuant to the Contract are completed or the Contract terminated. The term "Contract" when used in the specifications or drawings, or in the general conditions shall be considered as synonymous with the term "Contract Documents."

3.07 Contract Modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of the Contract accomplished by mutual action of the parties to the Contract.

3.08 "Contractor" shall mean _____, its employees and agents. "Contractor" also includes any firm, provider, organization, individual, or other entity performing Services under this Contract.

3.09 "Contractor's Account Manager" shall mean a representative of the Contractor who is assigned as the primary contact person with whom the county's Contract Administrator shall work for the duration of this Contract unless replaced, with advance county approval, by another representative.

3.10 "County" shall mean the County of Wayne, any department, division, section, office, unit or other entity of the County or any of the officers or other officials lawfully representing the County, which has executed this Contract with the Contractor for specified Equipment and/or Services.

3.11 **"County Contract Administrator"** shall mean that person designated by the Department of Information Technology to administer this Contract on behalf of the County as further defined in the section titled County contract Administrator.

3.12 **"County Contracting Officer"** shall mean that County Executive Officer, or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the contracting Officer acting within the limits of his/her authority.

3.13 **"Delivery Date"** shall mean the date by which the Software or Equipment ordered must be delivered.

3.14 **"Equipment"** shall mean personal computer hardware, printers, software, peripheral devices, supplies, and network hardware.

3.15 **"Execution Date"** shall mean the date of the last signature of a party to this Contract.

3.16 **"License"** shall mean the right to use the Software which is granted by this Contract and governed by its terms and conditions.

3.17 **"Licensed Software"** shall mean Software which is licensed pursuant to this Contract.

3.18 **"Order Document"** shall mean any official County document and attachments thereto specifying the Software or Equipment to be purchased from the Contractor under this Contract.

3.19 **"Related Services/Services"** shall mean those Services provided under this Contract and related to the Equipment being acquired, that are appropriate to the scope of this Contract and includes such things as installation services, maintenance, training, etc.

3.20 **"Software"** shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Contractor.

3.21 **"Specifications"** shall mean the technical and other specifications set forth in appendix A.

3.22 **"Subcontractor"** shall mean one not in the employment of the Contractor, who is performing all or part of those Services under this Contract under a separate contract with the Contractor. The term "Subcontractor" means Subcontractor(s) of any tier.

4. SCOPE OF SERVICE

4.01 Company will sell to the County the Equipment itemized in Appendix A and executed by an Order Document.

4.02 The Contractor must perform the Services in a satisfactory manner, as determined within the discretion of the County. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is qualified to perform the Services in this Contract.

4.03 The Contractor must expediently perform the Services to achieve the objectives of this Contract.

4.04 The Services include all conferences and consultation deemed necessary by the County to properly and fully perform the services.

4.05 All services are subject to review and approval of the County for completeness and fulfillment of the requirements of this Contract. Neither the County's review, approval, or payment for any of the services shall be construed to operate as a waiver of any rights under the Contract, and the Contractor shall be and remain liable for all damages to the County caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

5. LICENSE GRANT

5.01 Contractor grants to County a non-exclusive site-wide, irrevocable, and transferable license to use the Software and related documentation for an unlimited period according to the terms of this Contract.

5.02 County will not decompile or disassemble any Software provided under this Contract nor modify Software that bears a copyright notice of any third party; without permission of the third party.

5.03 County 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. County 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.

5.04 Contractor understands that County may provide information processing Services to other users that are agencies of county government and other tax-supported entities. Software delivered under this Contract may be used in the delivery of these Services. Contractor acknowledges and agrees that use of Software products is acceptable under the licensing agreements contained herein.

6. SOFTWARE OWNERSHIP

6.01 Contractor, as Licensor, warrants and represents to County as licensee that Contractor is the owner of the Licensed Software or otherwise has the right to grant to County the licensed rights to the Software provided by Contractor through this Contract without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Contractor.

6.02 Contractor shall maintain all title, copyright, and other proprietary rights in the Software. County does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.

6.03 The Software shall be of good merchantable quality and fit for the known purposes for which sold, and are free and clear of all liens and encumbrances. This Contract does not exclude, or in any way limit, other warranties provided for in this agreement or by law.

7. SPECIFICATIONS

7.01 Specifications are listed and described on Schedule B attached and made a part hereof, as though completely set forth. Contractor warrants that products delivered shall perform according to these specifications and any samples.

8. TERM

8.01 The License for all Software provided pursuant to this Contract shall be perpetual.

8.02 Maintenance and support of Software

- A. Initial Term The initial term for maintenance and support Services for Software licensed shall be one year, commencing one day following expiration of Contractor's warranty for the Software.
- B. Subsequent Terms. The terms of maintenance and support Services may be extended by an additional one year period provided the extension shall be at the option of the County and shall be effected by the Contractor giving written notice of expiration to the County not less than ninety calendar days prior to the expiration of the then current Contract term and County authorizing such extension prior to the expiration of the then current Contract term. The extension shall be governed by the terms in this Contract. No change in terms and conditions shall be permitted during the extension unless specifically set forth in this Contract.

8.03 Term of Contract for Purchases

- A. Initial Term. This Contract is effective from the date it is approved by resolution of the Wayne County Commission subsequent to being accepted by the parties and is effective for ____ years.
- B. Subsequent Term. The term of this Contract may be extended by one additional year period provided the extension shall be at the option of the County and shall be made effective by the County giving written notice of its intent to extend this Contract to the Contractor not less than thirty calendar days prior to the expiration of the then current contract term. No change in terms and conditions shall be permitted during the extension unless specifically set forth in this Contract.

9. PRICING

9.01 The Contractor agrees to provide the Equipment and Related Services at the costs, rates, and fees set forth in the Authorized Product and Price List attached as Appendix A to this Contract. No other costs, rates, or fees shall be payable to the Contractor.

9.02 No advance payment shall be made for the Equipment and Related Services furnished by Contractor pursuant to this Contract. All payments must be made after the delivery and acceptance of products or services.

10. INVOICES

10.01 The Contractor shall submit properly itemized invoices and/or vouchers to the County. Invoices shall provide and itemize, as applicable:

- a) Contract number;
- b) P.O. number;
- c) Invoice number;
- d) Description or Equipment, including quantity ordered;
- e) Date and delivery and/or date of installation;
- f) Contractor's list price for each item;
- g) Application discounts;
- h) Monthly maintenance charges;
- i) Net invoice price for each item;
- j) Available taxes;
- k) Shipping costs;
- l) Other applicable charges;
- m) Total invoice price; and
- n) Payment terms including any available prompt-payment discounts.

10.02 Such payments shall be due and payable within ninety calendar days after receipt and Acceptance of such Equipment or Services, or ninety calendar days after receipt of properly prepared invoices, whichever is later. Incorrect or incomplete invoices will be returned by the County to the Contractor for correction and reissue. The Contract number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

11. OVERPAYMENT TO CONTRACTOR

11.01 Contractor shall promptly refund to County the full amount of any erroneous payment or overpayment to which Contractor is not entitled pursuant to this Contract.

12. PROMPT PAYMENT

12.01 If the Contractor should subcontract a part of the obligations under this Contract to a business which has been certified by the County's Division of Human Relations as a small or disadvantaged business enterprise, the Contractor shall make prompt payments to each such subcontractor as the subcontract is performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of this Contract. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within 45 days after delivery or satisfaction of the subcontract, or receipt of a complete invoice therefore, whichever is later. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the subcontractor of that fact within 10 days after receipt of the invoice. The 45 day period shall be extended by each day over 5 days which the subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional amount to be calculated on a daily basis which is equal to an annual rate of interest of 9% (amount overdue X number of days overdue X .000246575). Interest shall not be due if payment is delayed because of a good faith disagreement between the Contractor and the subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by a subcontractor. This provision does not, however, create a duty on the part of the County to seek enforcement of a default of this provision or to make payment to the subcontractor on behalf of the Contractor.

13. DELIVERY

13.01 The Contractor shall deliver the Equipment ordered pursuant to this Contract on or before _____. For any exception to this Delivery Date, the Contractor must notify the County and obtain prior approval in writing. Time is of the essence with respect to delivery and the Contractor may be subject to liquidated damages and/or termination of this Contract and/or other damages available under law for failure to deliver on time.

13.02 All Equipment deliveries made pursuant to this Contract must be complete. Unless the Contractor has obtained prior written approval from County, which shall not be withheld unreasonably, incomplete deliveries or back orders will not be accepted. All packages must be accompanied by a packing slip that identifies all items within the shipment and the County's Purchase Order number. The Contractor's delivery receipt must be signed by an authorized representative of County for all deliveries.

13.03 Deliveries must be prearranged with the Division Director, Applications Division, Department of Technology, telephone (313) 224-0966.

14. RISK OF LOSS AND SHIPPING

14.01 The Contractor shall ship all Equipment purchased pursuant to this Contract, freight prepaid, FOB County's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. The County is not liable for extra charges for packing, cartage, or anything else unless stated in its order. Contractor shall mail invoices in triplicate, shipping documents and a copy of the package slip to the County on day shipment is made. Contractor shall pack, mark, and ship according to the requirements of common carrier and any written instructions from the County. Contractor shall secure the lowest reasonable cost transportation available consistent with the service required. Delivery of any goods or services shall not be deemed to be complete until actually received and accepted by the County. The County's count shall be accepted as final and conclusive on all shipments. Items delivered in error shall be returned at Contractor's expense at the County's option.

14.02 Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Equipment ordered which occurs prior to Acceptance, and such loss, damage, or destruction shall not release Contractor from any obligation. After Acceptance, the risk of loss or damage shall be borne by the County, except loss or damage attributable to the Contractor's fault or negligence.

15. INSTALLATION

15.01 Contractor shall install the Licensed Software on County's designated computer system according to applicable industry standards and the technical specifications in Appendix C. Equipment shall be installed according to the Order Document consistent with applicable industry standards and the technical specifications in Appendix A. Installation includes unpacking and set-up.

15.02 The County agrees to provide the proper environment, electrical, and hardware connections for the Equipment as specified by the Contractor and as required by manufacturer's specifications.

15.03 At the request of the County, the Contractor will make a pre-installation visit to inspect the premises to insure they are ready for installation to begin.

16. STANDARD OF PERFORMANCE AND ACCEPTANCE

16.01 During Performance Testing, as defined in this section, County shall conduct tests as it deems appropriate concerning whether the Licensed Software or Equipment appears to be capable of being effectively utilized in County's operating environment.

16.02 The Performance Testing shall commence within five Business Days after installation of the Licensed Software or Equipment by Contractor.

16.03 Subject to possible extensions as indicated below, the Performance Testing shall end after 15 calendar days.

16.04 The Performance Testing shall be extended according to the following procedures:

- A. If the County determines, at its sole discretion at any time prior to the end of the Performance Testing period, that the Licensed Software or Equipment appears to be deficient or unsuitable for the County's use for any reason, then the County may, at its discretion, promptly notify Contractor, specifying in the notice the respects in which the Licensed Software or Equipment is deemed to be deficient or unsuitable.
- B. If the County gives such notice to Contractor during the period beginning five Business days prior to the expiration of the Performance Testing period, then the expiration of the Performance Testing shall be postponed for five Business Days to permit Contractor to evaluate and correct the reported deficiency or unsuitability, unless otherwise specified in County's notice.

16.05 If the County agrees to extend the Performance Testing to permit Contractor to correct deficiencies, then the Performance Testing period shall be extended by the lesser of (a) the amount of time actually taken by Contractor to deliver a corrected version, or (b) any maximum amount of time deemed reasonable by the County.

16.06 County may (a) Accept the Licensed Software or Equipment subject to the terms and conditions of this contract or (b) Reject the Software or Equipment if it fails to conform to the specifications in the Contract by notice to Contractor at any time during the Performance Testing period. The date, if any, on which County accepts the Licensed Software or Equipment is referred to as the "Acceptance Date."

16.07 The warranty and maintenance periods shall begin on the Acceptance Date.

17. UPGRADES AND ENHANCEMENTS

17.01 Contractor shall be required:

- A. To supply at no added cost updated versions of the Software to operate on upgraded versions of operating systems;
- B. To supply updated versions of the Software which encompass improvements, extensions, or other changes which Contractor, at its discretion, deems to be logical improvements or extension of the original products supplied to the County; and
- C. To supply interface modules which are developed by the Contractor for interfacing the Software to other Software products.
- D. At no cost to the County, modify, improve, and/or upgrade the Equipment consistent with those modifications, improvements and/or upgrades included in or made a part of the same equipment model to other purchasers

18. MAINTENANCE AND SUPPORT SERVICES

18.01 Contractor shall provide a replacement copy or correction service at no additional cost to the County for any error, malfunction, or defect, if any, in the Software which, when used as delivered, fails to perform according to Contractor's officially announced technical specifications or Contractor's proposal and which the County shall bring to Contractor's attention. Contractor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner that is mutually beneficial. Contractor shall disclose all known defects and their detours or workarounds to the County.

18.02 In addition, Contractor shall provide the following Services:

- A. Contractor shall provide English-speaking telephone support, toll-free in the United States, to the County during Business Days and Hours. To secure service, the County is to contact _____, Contractor's telephone service shall include but is not limited to the following Services:
 - 1. Assistance related to questions on the use of the subject software or Equipment.
 - 2. Assistance in identifying and determining the causes of suspected errors or malfunctions.
 - 3. Advice on detours or workarounds for identified errors and malfunctions, where reasonably available.
 - 4. Information on errors previously identified by County and reported to Contractor and detours to these where available and
 - 5. Advice on the completion and authorization for submission of the required forms(s) reporting identified problems in the Software or Equipment to Contractor.
- B. Contractor may execute on-line diagnostics from a remote Contractor location to assist in the identification and isolation of suspected software errors or malfunctions.
- C. Within two Business Days of receiving oral or written notification by the County or any other user or Licensee of the Software, of identified errors or malfunctions in the Software, Contractor will either:

1. Provide County with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform County of the problem resolved and any significant operational differences resulting from the correction which is known by Contractor, or
 2. Provide County with a written response describing Contractor's then existing diagnosis of the error or malfunction and generally outlining Contractor's then existing plan and timetable, subject to County's approval, for correcting or working around the error or malfunction.
- D. Contractor will provide error corrections and maintenance releases to the Software which have developed by Contractor. Such releases shall be licensed to County pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform County of the problems resolved including any significant differences resulting from the release which are known by Contractor. Contractor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.
- E. If a problem occurs which significantly impacts County's usage of the Licensed Software and remains unidentified or unresolved either by detour or permanent correction after County has taken the Contractor-prescribed action, Contractor will dispatch a representative to the system location during Business Days and Hours, which representative must arrive within twenty four Business Hours. Contractor will provide or make available.
1. Advice and assistance in diagnosis and identification of errors or malfunctions in the Licensed Software.
 2. On-site consultation on correction or detour of identified errors or malfunctions.
 3. Advice and assistance on completion of form to report errors or malfunctions to Contractor as specified in the reporting procedure.

18.03 The Contractor agrees to provide on-site maintenance service availability to keep the machines in good working order. The maintenance service includes scheduled preventive maintenance based upon the specific needs of the individual Equipment as outlined in Appendix A and on-call remedial maintenance. Maintenance will include relocation of equipment, cleaning, testing, lubrication, adjustments and replacement of all parts and supplies required to maintain equipment in an operating condition. Parts will be furnished on an exchange basis regardless of when installed by the Contractor and will be new. Replaced maintenance parts become the property of the Contractor. The Contractor will provide on-site service within _____ hours of notification by the County.

18.04 When Contractor performs Services pursuant to this Contract which require the use of the County's computer system(s), the County agrees to make it available at reasonable times and in reasonable time increments, and in no event will the County charge the Contractor for such system use.

19. REAUTHORIZATION CODE REQUIRED

19.01 If a reauthorization code must be keyed in by Contractor for the Licensed Software to remain functional upon movement to another computer system, Contractor shall provide the reauthorization code to County within one Business Day after receipt of County's notice of its machine upgrade or movement.

20. SOFTWARE DOCUMENTATION

20.01 Contractor shall provide Software documentation at the earlier of installation of this software or within thirty calendar days after execution of this Contract or as otherwise mutually agreed, in the form of the same number of manuals as licensed users of the Software or another mutually agreed number of manuals, adequate for use of Software ordered under the sections of this Contract. Manual upgrades will be provided on a no-charge basis through the Contractor's local sales and service office.

20.02 For all Contractor Software furnished to the County within the scope of this Contract, the Contractor agrees that if it withdraws its support, if any, from such Software, it will immediately furnish to the County, if requested, at no additional cost, sufficient documentation to permit the County to maintain, modify or enhance such purchased or Licensed Software.

20.03. Contractor grants to the County the right to copy or otherwise reproduce manual and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

21. INSTALLATION (SITE) SECURITY

21.01 While on the County's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Contractor.

22. USE OF COUNTY'S PROPERTY AND FACILITIES

22.01 Any property of the County furnished to the Contractor shall be used only for the performance of this Contract.

22.02 The Contractor shall be responsible for any loss or damage to property of the County which results from willful misconduct or negligence on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property according to sound management practices to ensure that the property will be returned to the County in like condition to that in which it was furnished to the Contractor. Upon the happening of loss, or destruction of, or damage to, any County property, the Contractor shall notify the County thereof and shall take all reasonable steps to protect the property from further damage.

22.03 The Contractor shall surrender to the county all property belonging to the County upon completion, termination, or cancellation of this contract. All reference to the Contractor under this section shall include any of its employees, agents, or Subcontractors.

23. COMMITMENTS, WARRANTIES, AND REPRESENTATIONS

23.01 Any written commitment by the Contractor within the scope of this Contract shall be binding upon the Contractor. Failure of the Contractor to fulfill such a commitment may constitute breach and shall render the Contractor liable for liquidated or other damages due the County under the terms of this Contract.

23.02 For purposes of this Contract, a commitment by the Contractor, which must be in writing, includes:

- A. Prices, discounts, and options committed to remain in force over a specified period of time;
- B. Any warranty or representation made by the Contractor in a proposal as to Software performance or any other physical, design, or functional characteristics of a machine, Software package, system, training, Services, or other products within the scope of this Contract.
- C. Any warranty or representation made by the Contractor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
- D. Any modification of or affirmation of representation as to the above which is made by Contractor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
- E. Any representation by the Contractor in a proposal, supporting documents or subsequent negotiations as to training to be provided, Services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

24. PHYSICAL MEDIA WARRANTY

24.01 Contractor warrants to County that each licensed copy of the Licensed Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than ninety calendar days after the date of Acceptance of the software copy by the County.

24.02 County shall be entitled to replacement by Contractor, at Contractor's expense, including shipping and handling costs, of any Software copy provided by Contractor that does not comply with this warranty.

25. NO SURREPTITIOUS CODE WARRANTY

25.01 Contractor warrants to County that no copy of the Licensed Software provided to County contains or will contain any Self-Help Code nor any Unauthorized code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

25.02 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 a 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.

25.03 As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment of data; or to perform any other such actions.

25.04 Contractor will defend County against any claim, and indemnify County against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

26. DATE OPERATION WARRANTY

26.01 The Contractor expressly warrants that:

- A. Any computer hardware, software, application or system provided under this Contract will operate accurately. For purposes of this Article, a failure to "operate accurately" exists if any one or more of the following properties or capabilities is lacking: (i) execution of calculations using dates with a four-digit year; (ii) functionality (including both on-line and batch) including, but not limited to, entry, inquiry, maintenance, and update, to support four-digit year processing; (iii) interfaces and reports that support

four-digit year processing; (iv) after January 1, 2000, processing with a four-digit year without human intervention; (v) calculation of leap year correctly; and (vi) provision of correct results in forward and backward data calculation spanning century boundaries, including the conversion of previous years currently stored as two digits.

- B. That all computer hardware, software, applications and systems it uses to perform the Services required under this Contract will operate accurately as defined in this Section.

26.02 The Contractor shall promptly remedy any breach of this warranty at no additional charge to the County. Remedy of a breach may be through correction or replacement of the computer hardware, software, applications or system, with that which operates accurately. If, after its best efforts, the Contractor is unable to cure the breach within 90 days of the County's notification of the breach, the Contractor shall refund to the County any amounts paid by the County for the Services provided and indemnify and hold the County harmless from and against any and all liability, loss, or expense (including reasonable attorney's fees) resulting from the breach.

26.03 The Contractor's breach of this warranty shall not be subject to any provisions regarding limitations of the Contractor's liability set forth in this Contract.

27. SOURCE CODE ESCROW

27.01 The term "Source Code Escrow Package" shall mean the following:

- A. A complete copy in machine-readable form of the source code and executable code of the Licensed Software;
- B. A complete copy of any existing design documentation and user documentation; and/or
- C. Complete instructions for compiling and linking every part of the source code into executable code for purpose of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

27.02 Contractor shall deliver a Source Code Escrow Package to the Escrow Agent. When and if, from time to time during the term of this Contract, term of license or term of maintenance and support services Contractor provides County with a maintenance release or upgrade version of the Licensed Software, Contractor must, within ten Business Days thereafter deposit with the Escrow Agent, a Source Code Escrow Package for the maintenance release or upgrade version, and give County notice of such delivery.

27.03 County, at its option and expense, may request that the completeness and accuracy of any Source Code Escrow Package be verified.

- A. Such verification may be requested once per Source Code Escrow Package, including all maintenance releases and/or upgrade versions.
- B. Such verification will be conducted by the Escrow Agent or, upon at least ten Business Days prior to Contractor, by another party (the "Verifier") reasonably acceptable to Contractor (after full disclosure to Contractor of information reasonably requested by Contractor about the Verifier).
- C. Prior to conducting the verification, the Verifier shall first execute a form of confidentiality agreement prepared by Contractor and precluding the Verifier from disclosing any information about the Source Code Escrow Package to County other than whether the Source Code Escrow Package was found to be complete and accurate.
- D. Unless otherwise agreed at the time by Contractor and County, verification will be performed on site at County's premises, utilizing Contractor's equipment and software, at a time reasonably acceptable to Contractor. Contractor shall make technical and support personnel available as reasonably necessary for the verification.
- E. Contractor may at its discretion designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification.
- F. The responsibility for the completeness and accuracy of the verification will be solely that of the Verifier. Neither the Escrow Agent, if different from Verifier, nor Contractor shall have any responsibility or liability to County for any incompleteness or inaccuracy of any verification.

27.04 All fees and expenses charged by the Escrow Agent shall be borne by Contractor.

27.05 The Source Code Escrow Package may be released from escrow to County, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events" defined below:

- A. The Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;
- B. The Contractor has wound up or liquidated its business voluntarily or otherwise and the County has compelling reasons to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;

- C. The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its warranties and maintenance obligation; or
- D. When, in the County's determination, the Software fails to function.

27.06 If County desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Escrow Release Event, then:

- A. County shall document the occurrence of the Release Event.
- B. County shall maintain all materials and information comprising the Source Code Escrow Package to confidence according to the section in this Contract titled, Contractor's Proprietary Information:
- C. If the release is a temporary one, then County shall promptly return all released materials to Contractor when the circumstances leading to the release are not longer in effect; and
- D. County shall promptly respond, fully and completely, to any and all requests for information from Contractor concerning County's use or contemplated use of the Source Code Escrow Package.

28. COMPLIANCE WITH STANDARDS

28.01 Contractor represents that all Software and elements, including but not limited to, documentation and source code, shall meet and be maintained by Contractor to conform to applicable industry standards, specifications and any samples.

29. TRAINING

29.01 Contractor shall provide training, by at least one qualified Contractor personnel, in the use of the Licensed Software, to be attended by up to ten of county's employees, agents, or independent contractors, at the County's site of choice.

29.02 The starting dates of the training will be as agreed by the parties, but in no case later than

29.03 The training fee, whether separately stated under the pricing sections of this Contract or included in the license fee of the Software, shall cover all costs of training. County shall not be responsible for any additional Contractor costs for training required pursuant to this section.

30. DATA TO BE FURNISHED CONTRACTOR

30.01 Upon the request of the Contractor, without charge, the County must furnish copies of all information, data, reports, records, etc., that the County thinks is necessary to do the services. The Contractor is entitled to visit County offices and key facilities as approved by the County, during regular business hours to obtain the necessary data. The Contractor will schedule conferences at convenient times with key administrative personnel of the County to gather the information.

31. PERSONNEL

31.01 To induce the County to enter into the Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the services as set forth in the Contract. The execution of this Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

31.02 The Contractor warrants that all employees of the Contractor assigned to the performance of the services are qualified and authorized to perform the services under the state and local laws and governing professional association rules where the employee is employed.

31.03 Each employee must devote the time and professional ability as is necessary to most effectively and efficiently perform the services according to professional standards.

31.04 Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor must supply an acceptable replacement as soon as possible and agrees not to substitute a lower classified employee to perform the services without obtaining prior County approval in writing.

31.05 Employees' daily working hours may be determined by the Contractor. When the employees are working in or about a County facility, Contractor agrees to adjust its employees' daily working hours to be the same as those worked by County employees working at the facility.

32. COUNTY CONTRACT ADMINISTRATOR

32.01 The County shall appoint a Contract Administrator for this Contract who will provide oversight of the Services. The County Contract Administrator will manage this Contract on behalf of the County and will be the principal point of contact for the Contractor concerning Contractor's performance under this Contract. The County shall notify Contractor, in writing, when there is a new County Contract Administrator assigned to this Contract.

33. CONTRACTOR'S ACCOUNT MANAGER

33.01 The Contractor shall appoint an Account Manager for the County's account. The Contractor's Account Manager will be the principal point of contact for the county concerning the Contractor's performance and for receipt of notes. The Contractor's Account Manager will also serve as the focal point or business matters, support coordination, and administrative activities.

34. ADMINISTRATION

34.01 The Contractor must inform the County as soon as the following types of conditions become known:

- A. Probable delays or adverse conditions which do or may materially prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and
- B. Favorable developments or events which enable meeting time schedules or goals sooner than anticipated.

34.02 The Contractor must regularly inform the County of its activities in connection with its duties and must keep the County informed of the status of any program. The Contractor is not required to perform in a manner materially in conflict with requirements imposed by any applicable law including any statute, county charter, ordinance, resolution or executive order.

34.03 The Contractor shall have no authority in the name of the County to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

35. RECORDS - ACCESS

35.01 The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of 7 years after the Contract's termination and completion. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of 7 years after the Contract's termination and completion.

35.02 The County and the Legislator Auditor General have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any subcontractors, or agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor must include a similar covenant allowing for audit by the County and the Legislative Auditor General in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the County. The County may delay payment to the Contractor pending the results of any such audit without penalty or interest.

35.03 The Contractor agrees that representatives of the County are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services. The inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of the County should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within 10 days of notification by the County.

35.04 If, as a result of any audit conducted by or for a County, State of Michigan or Federal, agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the County may retain the amount of compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties.

36. RELATIONSHIP OF PARTIES

36.01 The relationship of the Contractor to the County is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. The Contractor agrees to hold the County harmless from any claims, and any related costs or expenses.

36.02 For all purposes, County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide services to the County, and is not being retained in any capacity as a joint enterprise or venturer with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

37. INSURANCE

37.01 Contractor, at its expense, must take out, carry and maintain insurance coverage meeting County's requirements during the term of the Contract.

37.02 All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no lower than XI and a policy holder's service rating no lower than [A] as listed in A.M. Best's Key Rating Guide, current edition or interim report. Companies with ratings lower than [A] or XI will be acceptable only upon written consent of the County.

37.03 Insurance policies must name the Contractor as insured, name the County as an additional insured and loss payee, and must not be canceled, terminated or materially changed without at least thirty (30) days prior notice from the Contractor to the County. Certificates evidencing such insurance must be submitted by Contractor to the County's Risk Management Division prior to the provision of any Services pursuant to this Contract, and at least fifteen (15) days prior to the expiration dates of expiring policies.

37.04 The County reserves the right to request complete copies of any insurance policies required by this Contract if deemed necessary to ascertain the details of coverage not provided by the Certificates. Such copies shall be "Originally Signed Copies" and so designated.

37.05 Compliance with the insurance requirements of this provision is a continuing condition of Contractor's rights under this Contract. If Contractor fails to procure and maintain such insurance, County shall have the right, but not the obligation, to procure and maintain the insurance for and in the name of Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or, at County's option, County may offset the cost incurred by County against amounts otherwise payable to Contractor under this Contract or any concurrent, successive or future contracts between the parties.

37.06 Contractor waives any rights of subrogation for personal injury or property damage against County, its officers, employees, agents and elected officials arising from this Contract. In the event of any payment by any insurer of Contractor, such insurer will not be subrogated to any of Contractor's rights of recovery therefor against County, its officers, employees, agents and elected officials. Contractor will not execute, nor deliver any instruments or other documents, nor take any other action to secure any such rights for Contractor's insurer(s) against County, its officers, employees, agents and elected officials. In addition, Contractor waives any rights of recovery it may have against County, its officers, employees, agents and elected officials for insured losses occurring to any property insured by Contractor in accordance with this Contract.

37.07 Unless otherwise agreed, Contractor must provide the following insurance with limits not less than indicated for the respective items:

- A. WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE INSURANCE, including Employer's Liability Insurance, complying with the laws of the state in which the work is to be performed or elsewhere as may be required. Employer's Liability Insurance shall be provided with a limit not less than \$100,000.
- B. COMPREHENSIVE LIABILITY INSURANCE, including Contractual Liability and Products-Completed Operations Liability as well as coverage on all Contractor's equipment (other than motor vehicles licensed for highway use) owned, hired or used in the performance of this Contract with limits not less than \$1 million – Bodily Injury & Property Damage combined each occurrence and aggregate with a three (3) year tail.
- C. If performance of this Contract requires use of motor vehicles licensed for highway use, Contractor shall provide AUTOMOBILE LIABILITY INSURANCE, including Contractual Liability, concerning all motor vehicles owned, hired or used in the performance of this Contract, with limits not less than \$500,000 – Bodily Injury & Property Damage combined each occurrence.

37.08 Contractor shall continue insurance coverage after the expiration or termination of this Contract as follows:

- A. If the Contractor maintains insurance coverage under a "claims made" insurance policy, Contractor shall continue the same insurance policy or maintain continuity of coverage under a similar policy or policies for six (6) years following the expiration or termination of the Contract.
- B. The Contractor shall continue to list the County as an additional insured under its general liability policy for six (6) years following the expiration or termination of the Contract.

37.09 If, during the term of this Contract, changed conditions or other pertinent factors, should in the reasonable judgment of the County, render inadequate the insurance limits, the Contractor will furnish, on demand, such additional coverage as may reasonably be required and available under the circumstances. The County will pay Contractor for this additional coverage which shall not exceed Contractor's cost of such coverage.

38. INDEMNIFICATION

38.01 The Contractor agrees to save harmless the County against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the County because of any of the following occurring during the term of this Contract:

- A. Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Contractor, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Contractor now existing, or to be created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the Contractor, or any of its employees to perform its obligations either implied or expressed under this Contract.

38.02 The Contractor agrees that it is its responsibility and not the responsibility of the County to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the County harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

38.03 The Contractor cannot hold the County liable for any personal injury incurred by the employee(s), agents or consultants of the Contractor while working on this Contract which is not held in a court of competent jurisdiction to be directly attributable to the gross negligence of the County or any employee of the County acting within the scope of their employment. The Contractor agrees to hold the County harmless from any such claim by the Contractor's employees.

38.04 This indemnity applies without regards to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

38.05 This indemnity must not be construed as a waiver of any governmental immunity the County, its agencies, or employees, has as provided by statute or modified by court decisions.

39. INTELLECTUAL PROPERTY INDEMNIFICATION

39.01 Contractor will, at its expense, defend or settle any claim against the County that Software, Equipment or work products supplied infringe any patent, copyright, utility model, industrial design, mask work, or trademark. Contractor will pay resulting costs, damages, and attorneys' fees finally awarded provided that County:

- A. Promptly notify Contractor in writing of the claim; and
- B. Cooperates with and agrees to use its best efforts to encourage the Office of the Corporation Counsel for the County to grant Contractor sole control of the defense and all related settlement negotiations.

39.02 Contractor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by County, except costs paid to the Office of Corporation Counsel as legal fees. If such claim has occurred, or in Contractor's opinion is likely to occur, County agrees to permit Contractor at its option and expense, either to procure for County the right to continue using the Software or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Software is enjoined by a court and the Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Software and refund its depreciated value. No termination charges will be payable on such returned Software. Depreciated value shall be calculated on the basis of a useful life of five years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. If the Software has been installed less than one year, transportation to the initial installation site paid by County shall be refunded by Contractor.

39.03 Contractor has no liability for any claim of infringement arising from:

- A. Contractor's compliance with any designs, specifications, or instructions of the County;
- B. Modification of the Software or Equipment by county or a third party without the prior knowledge and approval of Contractor; or
- C. Use of the Software or Equipment in a way not specified by Contractor; unless the claim arose against contractor's Software or Services independently of any of these specified actions.

40. LIQUIDATED DAMAGES

40.01 Liquidated Damages - General

- A. Any delay by the Contractor in meeting the delivery date and Acceptance date set forth in this Contract will interfere with the proper implementation of the County's programs to the loss and damage of the County.
- B. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, the County and the Contractor, therefore, agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following section and the parties agree that the Contractor shall pay such amounts as liquidated damages and not as a penalty.

40.02 Liquidated Damages - Specific

- A. If Contractor does not have the Software delivered by the Delivery Date agreed upon between the County and Contractor, then Contractor shall provide a revised Delivery Date. Contractor shall pay to the County as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified Delivery Date and the date that Contractor actually delivers the Software and Software is operational according to the Standard of Performance and Acceptance section, an amount of \$500 per day.
- B. If the revised Delivery Date is more than fifteen calendar days from the original Delivery Date, then by written notice to the Contractor the County may immediately terminate the right of Contractor to deliver the Software and the County may obtain substitute Software from another Contractor. In this event, the Contractor shall be liable for fixed and agreed liquidated damages,

in lieu of all other damages due to such delay, in the amount specified above, until substitute Software is installed, or a maximum of thirty calendar days from the original Delivery Date, whichever occurs first.

- C. If Contractor's maintenance personnel fail to arrive at the County's installation site within one day after notification by the County that maintenance is required, the Contractor shall pay to the County as fixed and agreed liquidated damages, in lieu of all other damages due to such non-responsiveness, for each hour between the agreed response time and the actual response time an amount of one hundred dollars per hour for each "late" hour or part (prorated) beginning with the time of notification by the county and ending with the time that Contractor's maintenance personnel arrive at the County's site.

41. LIMITATION OF LIABILITY

41.01 Neither the Contractor nor the County shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or the County. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than County acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the County or their respective Subcontractors and directly affect the Services in this Contract.

41.02 If delays are caused by a Subcontractor without its fault or negligence, neither the Contractor nor the County shall be liable for damages for delays, unless the Software or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Contractor or the County to meet its required performance schedule.

41.03 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

42. BANKRUPTCY OR INSOLVENCY

42.01 If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as "Contractor" in this Article unless the context clearly requires otherwise) the following rights, obligations and limitations control:

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which the County is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the County of:
1. adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
 2. adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
 3. adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the County as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to provide, the Contractor agrees that any requests by the County that the trustee or it as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than 5 business days' notice.
- D. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with the County in arranging for the orderly transfer of responsibilities to persons or entities as the County may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

42.02 Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Bankruptcy Code.

43. NOTICE OF MATERIAL CHANGES

43.01 The Contractor must immediately inform the County of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Reduction or change in staffing assigned to the Contract.

- B. Decrease in, or cancellation of, insurance coverage.
- C. Delinquent payment, or nonpayment, of tax obligations.
- D. Delinquent payment, or nonpayment, of payroll obligations.
- E. Delinquent funding, or nonfunding, of pension or profit sharing plans.
- F. Delinquent payment, or nonpayment, of subcontractors.
- G. Termination of, or changes in, subcontracts.
- H. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

44. TERMINATION

44.01 The County may terminate this Contract without cause at any time, without incurring any further liability, other than as stated in this Article by giving written notice to the Contractor of the termination. The notice must specify the effective date, at least 30 days prior to the effective date of the termination, and this Contract will terminate as if the date were the date originally given for the expiration of this Contract. If the Contract is terminated, the County will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The County will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the County represents a fair value of the services provided, less the amount of any previous payments made. The final payment constitutes full payment. If the Contractor accepts the payment, the Contract is satisfied. Contractor waives any claim for damages, including loss of anticipated profit. In no event shall County be liable for any loss of profits on the order or portion thereof so terminated. The parties agree that no payments under this section will exceed the amount payable under Article _____.

44.02 After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the date as the County specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the County the records, data, notes, reports, discs, and documents ("Records") as the County specifies, all pertinent keys to files, and carry out such directives as the County may issue concerning the safeguarding or disposition of files and property.
- D. Submit within 30 days a final report of receipts and expenditures of funds relating to this Contract.
- E. Place no further orders on subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated;
- F. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- G. Submit within 30 days a listing of all creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract.

44.03 Upon termination of this Contract, all Records prepared by the Contractor under this Contract or in anticipation of this Contract must, at the option of the County, become its exclusive property, whether or not in the possession of the Contractor. The Records are free from any claim or retention of rights on the part of the Contractor except as specifically provided. The County must return all the properties of the Contractor to it.

44.04 Any intentional failure or delay by the Contractor to deliver the Records to the County will cause irreparable injury to the County not adequately compensable in damages and for which the County has no adequate remedy at law. The Contractor will pay the County \$500.00 per day as damages, and not as a penalty, until it delivers the Records to the County. The County may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records which the Contractor consents to as well as all applicable damages and costs. The County has unrestricted use of the Records for the purpose of completing the services.

44.05 Access to the records prior to delivery must be restricted to authorized representatives of the County and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written concurrence of the County. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the County, having been developed for the County for its own and sole use.

44.06 In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

45. TERMINATION FOR NON-ALLOCATION OF FUNDS

45.01 If funds are not allocated to continue this Contract in any future period, the County will not be obligated to pay any further charges for Services including the net remainder of agreed-to consecutive periodic payments remaining unpaid beyond the end of the then-current period. The County agrees to notify the Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to the County if this section shall be exercised. This section shall not

be construed so as to permit the County to terminate this Contract in order to acquire similar Software or Services from a third party.

46. FAILURE TO PERFORM

46.01 If the Contractor fails to perform any substantial obligation under this Contract, the County shall give the Contractor written notice of such failure to perform. If after thirty calendar days from the date of the written notice Contractor still has not perform, then the County's may withhold all monies due and payable to Contractor, without penalty to the County, until such failure to perform is cured or otherwise resolved.

47. COUNTY'S CONFIDENTIAL INFORMATION

47.01 Contractor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the County's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Contractor agrees to hold all such information in strictest confidence, not to make use for other than the performance of this contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Contractor agrees to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure. Contractor further agrees to either destroy or return all such information at the end of the term of this Contract.

47.02 This section does not impose any obligation on the Contractor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Contractor; (3) furnished by the County to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

48. CONTRACTOR'S PROPRIETARY INFORMATION

48.01 Contractor acknowledges that the County is subject to the Freedom of Information Act (FOIA) and that this Contract shall be a public record as defined therein. Any specific information that is claimed by the Contractor to be confidential or proprietary, must be clearly identified as such by the Contractor. To the extent consistent with FOIA, the County shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the County will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order enjoining the disclosure. If Contractor fails to obtain the court order enjoining disclosure, the County will release the requested information on the date specified.

49. ETHICS IN CONTRACTING

49.01 The Contractor must comply with Article 12 of Chapter 120 of the Wayne County Code governing "Ethics in Public Contracting."

49.02 Contractor's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.

49.03 If the County determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further County contracts for up to three (3) years.

49.04 If the contract price is in excess of \$20,000 , or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-223, 120-224, 120-225, 120-228, 120-229, 120-231 or 120-233 of the Wayne County Code, the County has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Contract and require the Contractor to pay the County liquidated damages, and not a penalty of 15% of the total Contract compensation;
- B. Debar or suspend the Contractor from consideration from competing for further County contracts; or
- C. Recover the value transferred or received in breach of the ethical standards by a County employee or other person.

50. NONDISCRIMINATION PRACTICES

50.01 The Contractor must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.

E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

F. Article XI of Chapter 120 of the Wayne County Code governing Equal Contracting Opportunity.

G. Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to County during the term of the Contract.

18.02 The Contractor must not:

A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.

B. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.

C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.

D. Except as permitted by rules and regulations promulgated pursuant to Article XI of the Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight, of perspective employees. Contractor also shall not make or keep a record of that information or disclose such information.

E. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, or sex.

18.03 The Contractor must notify any subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The Contractor shall include the provisions of this Article in any subcontract, as well as provide the County with a copy of any subcontract agreement.

18.04 The Contractor and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight. This Section does not apply if it is determined by the Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

50.05 Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

50.06 If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

A. Withholding of payments to the Contractor under this Contract until the Contractor attains compliance;

B. Cancellation, termination or suspension of this Contract, in whole or in part;

C. Disqualification from bidding on future contractors for a period of no more than 3 years;

D. Referral to Corporation counsel for consideration of injunction, liquidated damages or other remedies; and/or

E. Because of the impracticable ability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the imposition of liquidated damages (not a penalty) in the amount of \$500.00 per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Purchasing Director, in consultation with the Director of Human Relations and Corporation Counsel. The liquidated damages shall first be setoff against the unpaid portion of the Contract price, and the balance shall be paid by the Contractor.

50.07 If the Contract is funded, in whole or in part, by federal funds:

A. Contractor's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of the Director of Human Relations;

B. Contractor must provide immediate notice to the County's Chief Executive Officer, the Director of Human Relations, and the Wayne County Commission when a subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in section 120-194 of the Wayne County Code; and

C. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose, provided the County has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

50.08 In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements Article XI of the Wayne County Code, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

51. NOTICES

51.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and mailed by first-class mail and addressed as follows:

If to the Contractor:

Attn: _____

Telephone: _____

Fax: _____

Email: _____

If to the County:

Attn: _____

Telephone: _____

Fax: _____

Email: _____

51.02 All notices are deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of notices at any time by giving notice to the other as provided. Any notice given by a party must be signed by an authorized representative of such party.

51.03 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

52. JURISDICTION AND LAW

52.01 This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against the County because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

53. ADDITIONAL SERVICES AND ORDERS

53.01 County and Contractor agree that additional Services, Equipment, and/or Software, which are appropriate to the scope of this Contract, may be added to this Contract (Appendix A) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services and/or Software, pricing, and additional terms and conditions as relevant. The additional Services and/or Software shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing

54. PUBLICITY

54.01 The Contractor agrees to submit to the County all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Contractor wherein the County's name is mentioned or language used from which the connection of the County's name may, in County's judgment, be inferred or implied. The Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the County.

55. UCC APPLICABILITY

55.01 Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC).

55.02 To the extent this Contract entails delivery or performance of Services, such Services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

55.03 Notwithstanding the Engagement of Contractor section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

55.04 All reference to the Contractor under this section shall also include Contractor's employees, agents, or Subcontractors.

56. NONEXCLUSIVE CONTRACT

56.01 The County or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to the County contained in this Contract will not be affected in any manner.

57. CHANGES IN SCOPE/SERVICE

57.01 County may request changes to the Scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification, as those terms are defined in this Contract.

57.02 If any such change request increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

57.03 Contractor shall provide County with a written proposal to County's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.

57.04 Contractor acknowledges that any change in the Contract price represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.

57.05 If the County does not accept the Contractor's proposal, the County may:

- A. withdraw its change request;
- B. modify its change request, in which case the procedures set forth above will apply to the modified change request; or
- C. issue a Change Order.

57.06 Any adjustment in the Contract price shall be computed in accordance with the provisions of Article 12 of this Contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided the County promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Services under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

57.07 No action, conduct, omission, prior failure or course of dealing by the County shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the County and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

57.08 No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the County.

58. ASSIGNMENT AND SUBCONTRACTORS

58.01 The Contractor may, with prior written permission from the County, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the County for any breach in the performance of the Contractor's duties. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of the Contractor, and the Contractor further agrees to hold the County harmless from acts or omissions of the Contractor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. The County shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of the Intellectual Property Indemnification section of this Contract occasioned by the acts or omissions of the Contractor's Subcontractors, their agents, or employees. The Intellectual Property Indemnification section of this Contract shall apply to all Subcontractors.

58.02 The Contractor must not assign this Contract, nor any part, without the County's prior written approval. Assignment or transfer of this Contract without written consent of the County may be construed by the County as a breach of contract and subject to termination at the discretion of the County.

59. COMPLIANCE WITH LAWS

59.01 Contractor represents and warrants that the performance of this Contract and the furnishing of the Software shall be according to applicable standards, provisions, and stipulations of all pertinent federal, state, or Wayne County laws, rules, regulations, resolutions, and ordinances including, but not limited to, the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

59.02 The Contractor must hold the County harmless with respect to any damages arising from any violations of this Article by it or its employees.

60. WAIVER OF ANY BREACH

60.01 No failure by a party to insist upon the strict performance of any term of this Contract or to exercise any term after a breach, constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Contract, but every term of this Contract remains effective with respect to any other then existing or subsequent breach.

61. SEVERABILITY OF PROVISIONS

61.01 If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Contract, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable.

62. MERGER CLAUSE

62.01 This document, including the Appendices, schedules, attachments, exhibits, and change orders contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. There are no promises or understandings other than those stated. Any terms or conditions of sales set forth in the Contractor's quotation or order or sales acknowledgment shall not constitute a part of the agreement between the parties.

63. PAYMENT OF LIVING WAGE

63.01 The Contractor must pay its work force a living Wage, as defined Section 120-65 of the Procurement Ordinance for the term of the Contract. The Contractor must post a notice of this requirement in its work place; which notice must state that if the Contractor has failed to comply with the requirements of this Article, an employee may file a notice of noncompliance upon the Compliance Manager. If an employee of the Contractor files a complaint with the Compliance Manager, the Compliance manager shall notify the Contractor to submit proof of compliance within 30 days. Failure of the Contractor to do so shall be grounds for termination of this Contract.

63.02 If the Contractor does not comply with the Living Wage provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

A. Because of the impracticable ability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the imposition of liquidated damages (not a penalty) in the amount of \$50.00 per day, for each day that the Contractor shall fail to comply with said requirements;

B. Termination of the Contract, if the Contractor failure to rectify the non-compliance within thirty (30) days from the date of notice of the determination of noncompliance;

C. Requiring the Contractor to pay to the employee affected the amount of the deficiency, for each day the violation continues;

D. Withholding of payments to the Contractor under this Contract in amounts necessary to effectuate the payments;

E. Refusal to accept any bids or grant applications or requests for a period of five (5) years if the Contractor has failed on two (2) separate occasions to comply with this Article during the previous five (5) year period.

63.03 If the auditor determines that the Contractor has violated the Living Wage Ordinance, the County may immediately terminate the Contract and debar the Contractor from bidding on or entering into any contract with the County or from receiving any financial assistance from the County for a period of five years.

63.04 Upon execution of this Contract, the Contractor shall file with the County a signed affidavit stating that all employees working under the Contract meet the requirements of the ordinance and shall continue to meet the requirements of this ordinance for the life of the Contract. The affidavit must be signed by the business owner or another designated representative of the Contractor. The Contractor shall maintain payroll records for all employees and shall preserve them for a period of at least four (4) years. The Contractor shall permit access to job sites and relevant payroll records for authorized County representatives for the purpose of monitoring compliance, investigating employee complaints of non-compliance, and evaluating the operation and effects of the ordinance. In addition to any other sanctions set forth herein, a Contractor who fails to submit documents, declarations or information required to demonstrate compliance shall be deemed by the auditor to be noncompliant or non responsive and shall have Contract payments denied or suspended until compliance is demonstrated.

64. DEBARMENT AND SUSPENSION

32.01 The Contractor certifies to the best of its knowledge and belief, that:

a. The Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;

b. The Contractor and its principals have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes, or

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. The Contractor and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 64.01 b above; and;
- d. The Contractor and its principals have not, within a three-year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

64.02 The certification in this clause is a material representation of fact upon which reliance was placed. When the County determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate this Contract for cause or default.

64.03 The Contractor shall provide immediate written notice to the County if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

64.04 The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "Grantee", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76.

64.05 The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County.

64.06 The Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", provided by the County, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

64.07 A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

64.08 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

32.09 If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the County, the County may terminate this transaction for cause or default.

64. MISCELLANEOUS

64.01 The Contractor covenants that it is not, and will not become, in arrears to the County upon any contract, debt, or any other obligation to the County, including real property and personal property taxes.

64.02 The articles with headings Indemnification, Termination, and Notices survive termination of the Contract.

64.03 All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

64.04 If any Affiliate of the Contractor takes any action which, if done by the Contractor, would constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

64.05 Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

64.06 The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

64.07 As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

64.08 The County is exempt from federal excise and state sales taxes.

64.09 If a bona fide dispute concerning a question of fact arises between the Contractor and the County and it cannot be resolved between the parties with the aid of the County Contact Administrator, either party may initiate the dispute resolution procedure.

64.10 The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

64.11 The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Contract shall so survive. In addition, the terms of the sections titled Limitation of Liability, Intellectual Property Indemnification, Indemnification, Notices and Protection of County's Confidential Information shall survive the termination of this Contract.

65. AUTHORIZATION AND CAPABILITY

65.01 The Contractor warrants to the County that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so on behalf of the Contractor and is empowered to bind the Contractor to this Contract.

65.02 This Contract is effective only upon review and approval by the Wayne County Commission.

66. SIGNATURE

66.01 The County and the Contractor, by their authorized officers and representatives have executed this Contract.

CONTRACTOR

COUNTY OF WAYNE

By: _____

By: _____

ROBERT A. FICANO

Its: _____

Its: COUNTY EXECUTIVE

230331
Rev1/30/09

SECTION 7 - REQUIRED FORMS

FORMS INCLUDED IN THIS SOLICITATION DOCUMENT:

- (1) Proposal Form
- (2) Price Sheet

FORMS THAT MUST BE DOWNLOADED FROM THE WAYNE COUNTY WEBSITE*

Failure to complete and submit these forms with your Proposal may result in it being deemed non-responsive and rejected without further evaluation.

- (3) Business Information Questionnaire Form
- (4) Ethics in Contracting Vendor Form
- (5) W-9 Form (Standard IRS Form)
- (6) Living Wage Ordinance,
- (7) Slavery Era Disclosure Form,
- (8) Subcontractor Form,
- (9) Fair Employment Practices (FEP) Form or a current FEP certificate,
(FEP is required for prime and subs)

*Download solicitations, addenda and forms at: www.waynecounty.com/mygovt/mb/proposals/proposals.aspx

PROPOSAL FORM

Failure to complete this form shall result in your Proposal being deemed non-responsive and rejected without further evaluation.

TO: WAYNE COUNTY:

The Undersigned hereby offers and agrees to furnish the goods and/or services in compliance with all terms, scope of work, conditions, specifications, and addenda in the Request for Proposal.

ADDENDA:

The undersigned has read, understands and is fully cognizant of the Information to Proposers, Offer and Form of Contract, all Exhibits thereto, together with any written addendum issued in connection with any of the above. The undersigned hereby acknowledges receipt of the following addendum(s): _____, _____, _____, _____ (write "none" if none). In addition, the undersigned has completely and appropriately filled out all required forms.

OBLIGATION:

The undersigned, by submission of this Offer, hereby agrees to be obligated, if selected as the Contractor, to provide the stated goods and/or services to the County, for the term as stated herein, and to enter into a Contract with the County, in accordance with the Conditions, Scope and Terms, as well as the Form of Contract, together with any written addendum as specified above.

COMPLIANCE:

The undersigned hereby accepts all administrative requirements of the RFP and will be in compliance with such requirements. By submitting this Proposal Form, the Proposer represents that: 1) the Proposer is in compliance with any applicable ethics or anti-kickback provisions of the County's Procurement Ordinance, and 2) if awarded a contract to operate the Concession or provide the Services required in the RFP, the Proposer will comply with the ethics and anti-kickback provisions of the Procurement Ordinance.

NONCOLLUSION:

The undersigned, by submission of this Proposal Form, hereby declares that this Proposal is made without collusion with any other business making any other Proposal, or which otherwise would make a Proposal.

PERFORMANCE GUARANTEE:

The undersigned further agrees that if awarded the Agreement, it will submit to the County any required performance guarantee (i.e. irrevocable letter of credit or cash deposit).

SUBMITTAL REQUIREMENTS:

The undersigned certifies it has attached a complete response to each of the submittal requirements listed in the Evaluation Criteria and Submittal Requirements section of this RFP.

No proposal shall be accepted which has not been manually signed in ink in the appropriate space below:

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:

For clarification of this offer, contact:

Company Name

Name: _____

Address

Title: _____

City State Zip

Phone: _____

Signature of Person Authorized to Sign

Fax: _____

Printed Name

Email: _____

Title

Federal Tax ID

Acknowledged before me by _____ (name) as _____ (title)
of _____ (company) this ____ (day) of _____, 200__.

Notary Signature: _____

My Commission Expires: _____

Affix Seal

PRICE SHEET

Failure to complete this form shall result in your Proposal being deemed non-responsive and rejected without further evaluation.

Task	Year 1	Year 2	Year 3	Option Year 4	Option Year 5
Course Development (per hour)	\$_____	\$_____	\$_____	\$_____	\$_____
Course Maintenance (annual - per course)	\$_____	\$_____	\$_____	\$_____	\$_____
Learning Management System Support (annual)	\$_____	\$_____	\$_____	\$_____	\$_____
Video Messaging (per month)	\$_____	\$_____	\$_____	\$_____	\$_____

OPTIONAL ALTERNATE PRICING ALL-INCLUSIVE FIXED MONTHLY FEE PER EMPLOYEE

Provide a fixed all-inclusive monthly fee per police officer, per month, for all Learning Management System services including development, implementation, maintenance, and, system support. (The payment will be based on the number of employees on the payroll as of the first of every month.)

Monthly Fee per Employee	Year 1	Year 2	Year 3	Option Year 4	Option Year 5
If 1,100 officers are trained	\$_____	\$_____	\$_____	\$_____	\$_____
If 1,000 officers are trained (annual - per course)	\$_____	\$_____	\$_____	\$_____	\$_____
If 900 officers are trained Support (annual)	\$_____	\$_____	\$_____	\$_____	\$_____
If 800 officers are trained	\$_____	\$_____	\$_____	\$_____	\$_____