

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

July 21, 2010

**NOTICE
 OF
 CONTRACT NO. 071B0200277
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR <p style="text-align: center;">Chevron Energy Solutions Company 5445 Corporate Drive, Suite 180 Troy, MI 48098</p> <p style="text-align: right;">Email:hken@chevron.com</p>	TELEPHONE Ken Hedrick (248) 952-0162 ext. 224
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-0301 Sue Cieciwa
Contract Compliance Inspector: Jerry Elmsblad (517) 373-4471 Technical Energy Audit and Project Proposal Contract – Kinross Correctional Facility	
CONTRACT PERIOD: 5 mths.+ one-6-mth option From: July 21, 2010 To: December 10, 2010	
TERMS	SHIPMENT
N/A	N/A
F.O.B.	SHIPPED FROM
N/A	N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

Estimated Contract Value: \$16,617.12

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

CONTRACT NO. 071B0200277
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR <p style="text-align: center;">Chevron Energy Solutions Company 5445 Corporate Drive, Suite 180 Troy, MI 48098</p> <p style="text-align: right;">Email: hken@chevron.com</p>	TELEPHONE Ken Hedrick (248) 952-0162 ext. 224 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 Sue Cieciva
Contract Compliance Inspector: Jerry Elmblad (517) 373-4471 Technical Energy Audit and Project Proposal Contract – Kinross Correctional Facility	
CONTRACT PERIOD: 5 mths.+ one-6-mth option From: July 21, 2010 To: December 10, 2010	
TERMS	SHIPMENT
N/A	N/A
F.O.B.	SHIPPED FROM
N/A	N/A
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of RFP #07110200107, This Contract Agreement and the vendor's quote dated June 3, 2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.	
Estimated Contract Value: \$16,617.12	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 07110200107. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:	FOR THE STATE:
Chevron Energy Solutions Company Firm Name	Signature Sue Cieciva, Buyer Specialist Name/Title
Authorized Agent Signature	Commodities Division, Purchasing Operations Division
Authorized Agent (Print or Type)	Division
Date	Date



TECHNICAL ENERGY AUDIT & PROJECT PROPOSAL CONTRACT

TABLE OF CONTENTS

Technical Energy Audit and Project Proposal Contract

Exhibit A: Scope of Work

Exhibit B: Notice of Acceptance of Technical Energy Audit Report

Exhibit C: Guidelines for Draft Monitoring and Verification Plan

Exhibit D: Cost and Pricing

Article 2 – DTMB Terms and Conditions

Article 6 – ARRA Terms and Conditions

Attachment I – Special Working Rules

Department of Corrections Inside Prison

Department of Corrections Outside Prison



**TECHNICAL ENERGY AUDIT AND
PROJECT PROPOSAL CONTRACT**

This Technical Energy Audit & Project Proposal Contract (Audit Contract) is entered into as of July 21, 2010, between Chevron Energy Solutions Company (Contractor), having its principal offices at 5445 Corporate Drive, Suite 180, Troy, Michigan, and the Michigan Department of Technology, Management, and Budget (DTMB) for the Department of Corrections for the following facility: Kinross Correctional Facility, Kincheloe, Michigan.

WITNESSETH

WHEREAS, Contractor submitted a response to DTMB's Request for Proposals (RFP), pertaining to the evaluation, discovery, design, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of facility improvements, but not limited to energy and water saving measures.

WHEREAS, DTMB has selected Contractor to provide the services described in this Audit Contract; and

WHEREAS, DTMB and Agency desire to enter into this Audit Contract to have Contractor perform a **Technical Energy Audit and Project Proposal** (Audit) to determine the feasibility of entering into an **Energy Performance Contract** to provide for installation and implementation of energy and water saving measures at Agency's Facility.

WHEREAS, if energy and water saving measures are determined to be feasible, and if the amount of savings is sufficient to cover all costs, as defined by DTMB and the Agency, associated with an energy performance contracting project, the Parties intend to negotiate an Energy Performance Contract under which the Contractor will design, procure, install, implement, maintain and monitor the energy and water saving measures. However, this intent does not obligate DTMB to enter into any Energy Performance Contract.

THEREFORE, the Parties agree as follows:

1. Audit Contract

Contractor agrees to perform an Audit in accordance with the Scope of Work described below. Contractor agrees to complete the Audit and give to DTMB a final report by **approximately 8/20/2010**, within 30 calendar days from the DTMB's execution of this Contract.

Agency agrees to assist the Contractor in performing the Audit in accordance with the Scope of Work provided below. Agency agrees to work diligently to provide full and accurate information. Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. The Parties contemplate that this will be a repetitive process and that DTMB will have a reasonable amount of time to review and determine acceptance before issuing the **Notice of Acceptance - Exhibit B, if any.**



Contractor agrees to offer an **Energy Performance Contract Proposal** with a package of energy and water saving measures and with details as specified in the Scope of Work below.

2. Compensation to Contractor

Contractor will be compensated as follows:

- a. **Basis and Maximum Amount.** Except as provided for in **Subsections 2(b), 2(c), or 2(d)** below, within 45 days after DTMB's acceptance of the final **Technical Energy Audit and Project Proposal Report** Agency will pay to Contractor an amount not to exceed Sixteen Thousand Six Hundred Seventeen Dollars and Twelve cents (\$16,617.12) based on a maximum of 415,428 gross square feet at \$.04 per square foot of audited square-footage, as per **Exhibit B: Cost and Pricing**. Agency will only pay for square-footage actually audited. Areas agreed by the Parties not to be audited must not be charged to Agency.
- b. **Payment through Energy Performance Contract.** Agency will have no payment obligations under this Contract provided that Contractor and Agency execute an Energy Performance Contract **by approximately 9/30/2010**, after issuance of the **Notice of Acceptance (Exhibit B)** of the final **Audit Proposal Contract**, but the fee indicated above will be incorporated into Contractor's project costs in the Energy Performance Contract and paid through the Energy Performance Contract funding mechanisms—but excluding the lease with option to purchase, which must only finance equipment acquisition.
- c. **Project With Insufficient Savings.** Agency will have no payment obligations under this Contract in the event that Contractor's final **Technical Energy Audit and Project Proposal Report** does not contain a package of energy and water saving measures which, if implemented and as meeting terms of **Exhibit A: Scope of Work, and (b) Guidelines and Requirements**, will provide the Agency with cash savings sufficient to fund Agency's payments of all costs and fees associated with the Energy Performance Contract, including 1) the fee for the Audit, 2) all monthly payments on a lease with an option to purchase agreement to finance the equipment, and 3) any annual fees for monitoring and maintenance incurred by the Contractor. Should the Contractor determine at any time during the Audit that savings cannot be attained to meet these terms; the Audit will be terminated by written notice by the Contractor to DTMB and Agency. In this event, the Audit Contract will be cancelled and neither DTMB nor Agency will have the obligation to pay, in whole or in part, the amount specified in this **Section 2(a)**.

3. Scope of Work

The Audit must be performed as required in **Exhibit A - Scope of Work**.

4. Energy Performance Contract

The Parties may enter an Energy Performance Contract under which the Contractor will design, install and implement energy and water saving measures which the Parties have agreed to, and provide maintenance and monitoring services. However, nothing in the Audit Contract must be construed as an obligation on any of the Parties to enter an Energy Performance Contract. The Energy Performance Contract, if entered, will be a separate contract.



5. Extent of Agreement

- a. The Audit Contract represents the entire and integrated agreement between DTMB, Agency and Contractor and supersedes all prior negotiations, representations or agreement, either written or oral. The Audit Contract may be amended only by written instrument signed by all the Parties.
- b. DTMB and Contractor agree that the attachments and exhibits to the Audit Contract are an integral part of the Audit Contract and their terms and provisions are incorporated into the Audit Contract.

6. Term

The Audit Contract will be effective upon DTMB execution. The term ends 12/10/2010 with a six month option after signing of the **Notice of Acceptance - Exhibit B** of the Final Technical Energy Audit Report by DTMB.

7. Order of Precedence

In the event of conflict or inconsistency between the Audit Contract and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference to the **Article 2 - DTMB Terms and Conditions** which will take precedent, followed by the exhibits and attachments.



EXHIBIT A Scope of Work

a. Process

This will be an interactive approach in working with DTMB and Agency, following these steps:

- 1) Preliminary Assessment of Needs and Opportunities [put in timeframes]
 - a) Meet with Agency to establish interests, plans, problems, etc. related to Facility and operation of Facility
 - b) Collect data and background information on buildings, equipment and Facilities operation
 - c) Perform a preliminary walk-through of Facility and interview staff and occupants [delete for DOC] to identify potential measures
 - d) Meet with DTMB and Agency to present preliminary findings and establish agreement on measures to analyze
- 2) Preliminary Analysis of Measures
 - a) Establish base year consumption and reconcile with end-use consumption estimates
 - b) Conduct a preliminary analysis of potential measures
 - c) Meet with DTMB and Agency to present preliminary findings and establish agreement on measures to further analyze
- 3) Further Analysis and Audit Report
 - a) Further analyze measures
 - b) Develop a draft Audit Report
 - c) Meet with DTMB and Agency to present results
 - d) Prepare final Audit Report
- 4) Energy Performance Contract Proposal
 - a) Develop energy performance contract proposal
 - b) Meet with DTMB and Agency to present results and negotiate final terms

b. Scope Guidelines and Requirements

- 1) Energy Performance Contract Term. The Energy Performance Contract Term must have a term no greater than **seven** years and no greater than the cost-weighted average lifetime of the equipment.
- 2) Annual Guaranteed Energy and Cost Savings. An annual contractual Guarantee must be provided for the **first two years after the completion of the project improvements**, or at the request of the Agency for each subsequent year of the contract term. The guarantee must be based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, Contractor fees, maintenance services, monitoring services, and other services.
- 3) Contractor must reserve up to 2% of annually guaranteed savings for Agency to hire an independent third-party professional to review the ESCO's monitoring and



verification reports, and advise Agency of compliance in monitoring and verifying savings.

- 4) Excess Savings. Annual cost savings beyond the guaranteed minimum savings will be retained by Agency, and will not be allocated to shortfalls in other years.
 - 5) Annual Savings Estimates: The annual savings estimates for all measures must be estimated for each year during the Energy Performance Contract period.
 - 6) Allowable cost and savings factors approved for consideration: Agency will provide Contractor with sufficient records/information to develop savings estimates.
 - a) Payment sources that can be incorporated:
 1. Energy and water cost savings
 2. Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable)
 3. Outside labor cost savings, including maintenance contracts
 4. In-house labor costs
 5. Deferred maintenance cost
 6. Offset of future capital cost
 7. Outside incentive funds (utility incentives, grants, etc.)
 8. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
 - b) Payment sources that may also be considered and negotiated:
 - c) Additional factors related to establishing savings that cover all costs:
 1. Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes. NOTE: Use federal government guidelines on utility escalation rates to ensure reasonableness.
 2. Interest rates (municipal tax-exempt rates for public institutions)
 3. Agency cash outlay (Agency's sole discretion)
 - d) The markup costs are presented in **Exhibit D: Cost and Pricing**. These rates will be used in the Audit and subsequent Energy Performance Contract, if entered between the parties.
- c. **Collect data and background information from Agency** concerning facility operation and energy use for the most recent three years from the effective date of this Audit Contract as follows.
- 1) Building square footage.
 - 2) Construction data of buildings and major additions including building envelope
 - 3) Utility company invoices
 - 4) Occupancy and usage information
 - 5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.
 - 6) Description of energy management procedures utilized on the premises
 - 7) Description of any energy-related improvements made or currently being implemented
 - 8) Description of any changes in the structure of the facility or energy-using or water-using equipment
 - 9) Description of future plans regarding building modifications or equipment modifications and replacements
 - 10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)



- 11) Original construction submittals and factory data (specifications, pump curves, etc.), as available
- 12) Operating engineer logs, maintenance work orders, etc., as available
- 13) Records of maintenance expenditures on energy-using equipment, including service contracts
- 14) Prior energy audits or studies, if any

Agency agrees to work diligently to furnish Contractor, upon request, accurate and complete data and information as available. Where information is not available from Agency, Contractor will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

d. **Identify potential measures**

- 1) Interview the Facility manager, maintenance staff, subcontractors and occupants of each building regarding:
 - a) Facility operation, including energy management procedures
 - b) Equipment maintenance problems
 - c) Comfort problems and requirements
 - d) Equipment reliability
 - e) Projected equipment needs
 - f) Occupancy and use schedules for the facility and specific equipment.
 - g) Facility improvements – past, planned and desired
- 2) Survey major energy-using equipment, including lighting (indoor and outdoor), heating and heat distribution systems, cooling systems and related equipment, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water systems, electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.), renewable energy systems, other energy using systems, water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- 3) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.
- 4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
 - a) Comfort and maintenance problems
 - b) Energy use, loads, proper sizing, efficiencies and hours of operation
 - c) Current operating condition
 - d) Remaining useful life
 - e) Feasibility of system replacement
 - f) Hazardous materials and other environmental concerns
 - g) Agency's future plans for equipment replacement or building renovations
 - h) Facility operation and maintenance procedures that could be affected
 - i) Capability to monitor energy performance and verify savings

Agency will allow Contractor reasonable access to facility staff to ensure understanding of existing systems and opportunities.



Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. **Establish base year consumption and reconcile with end use consumption estimates.**

- 1) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- 2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), Contractor will use its best judgment, spot measurements or short-term monitoring. Contractor should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
- 3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.
- 4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

f. **Develop a preliminary analysis of potential energy and water saving measures.**

This list shall be compiled and submitted to Agency with the Audit.

- 1) List all potential opportunities, whether cost-effective or not. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.
- 2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis
- 3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

g. **Meet with DTMB and Agency to present preliminary findings** prior to thorough analysis.

Describe how the projected project economics meet the Agency’s terms for completing the Audit Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The DTMB and Agency will have the option to reject calculations of savings, potential savings allowed, or project recommendations.



- h. **Analyze savings and costs for each energy and water saving measure.**
- 1) Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option
 - 2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
 - 3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
 - 4) Use markups and fees stated above in all cost estimates.
 - 5) Develop a preliminary measurement and verification plan for each measure
 - 6) Follow additional guidelines for analysis and report preparation given below
- i. **Prepare a draft Audit Report.** The Audit Report provides the engineering and economic basis for entering the potential Energy Performance Contract between the DTMB and the Contractor. The Audit Report must be completed by [approximately 8/20/2010](#), within 30 calendar days of the date of DTMB execution of the Audit Contract. The Audit Report must include:
- 1) Overview
 - a) Contractor' contact information
 - b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life
 - c) Summary of annual energy and water use by fuel type and costs of existing or base year condition
 - d) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total Facility energy cost.
 - e) Description of the Facility's existing, mechanical and electrical systems
 - f) Summary description of measures, including estimated costs and savings for each as detailed above
 - g) Discussion of measures considered but not investigated in detail
 - h) Conclusions and recommendations
 - 2) Base year energy use
 - a) Description and itemization of current billing rates, including schedules and riders.
 - b) Summary of all utility bills for all fuel types and water
 - c) Identification and definition of base year consumption and description of how established
 - d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings)
 - 3) Full description of each energy and water saving measure including:
 - a) Written description
 - (1) Existing conditions
 - (2) Description of equipment to be installed and how it will function
 - (3) Include discussion of Facility operations and maintenance procedures that will be affected by installation/implementation
 - (4) Present the plan for installing or implementing the recommendation



- b) Savings calculations
- (1) Base year energy use and cost
 - (2) Post-retrofit energy use and cost
 - (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
 - (4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year of the Energy Performance Contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the Energy Performance Contract).
 - (5) Savings estimates must be limited to savings allowed by the Agency as described above
 - (6) Percent cost-avoidance projected
 - (7) Description and calculations for any proposed rate changes
 - (8) Explanation of how savings interactions between retrofit options is accounted for in calculations
 - (9) Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment
 - (10) If computer simulation is used, include a short description and state key input data. If requested by Agency, access will be provided to the program and all assumptions and inputs used, and/or printouts must be provided of all input files and important output files and included in the Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
 - (11) If manual calculations are employed, formulas, assumptions and key data must be stated.
 - (12) Conclusions, observations, caveats
- c) Cost estimate (detailed scope of the construction work needed, suitable for cost estimating.)
- Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts
- (1) Engineering/design costs
 - (2) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities
 - (3) Permit costs
 - (4) Construction management fees
 - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
 - (6) Note that all markups and fees stated in the Audit Contract must be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances
 - (7) Conclusions, observations, caveats
 - (8) Other cost categories as defined above under “markups” in Section 3b above.



d) Other

- (1) Estimate of average useful service life of equipment
- (2) Preliminary commissioning plan
- (3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure will be measured and verified (as stipulated by the Energy Performance Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary Measurement and Verification (M&V) plan must follow the format provided in **Exhibit C: Guidelines for Draft Monitoring and Verification Plan.**
- (4) Discussion of impacts that Facility would incur after the Energy Performance Contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
- (5) Compatibility with existing systems. No proprietary systems shall be used. All systems will be open protocol or open backnet systems full compatible with existing systems.
- (6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

j. **Meet with DTMB and Agency to:**

Review the recommendations, savings calculations and impact of the measures on the operations of the Facility. Describe how the projected project economics meet the Agency's terms for completing the Technical Energy Audit and Performance Contract Proposal. Discuss the capability of Agency to make capital contributions to the project to improve the economics of the overall project.

k. **Revise Audit Report as directed by DTMB and Agency.**

1. **Prepare an Energy Performance Contract Proposal (Term Sheet).** In contemplation of Contractor and DTMB entering into an Energy Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Audit Report, Contractor must prepare a proposal for terms to be incorporated in the Energy Performance Contract to include:

- 1) Contract Amount is the total amount Agency will pay for the acquisition of installed equipment and Contractor's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.

Any contracts for work associated with proposed performance contracting, such as construction contracts for installation of energy saving equipment, must comply with all applicable federal, state and local Laws including health and safety regulations, environmental protection, permits and licensing. All such contracts will include DTMB Design and Construction Division general conditions and related documents.



- 2) Include a List of Services that will be provided as related to each cost.
- 3) Expected term of the contemplated Energy Performance Contract.
- 4) Description of how the Contractor proposes the project will be financed, including available interest rates and financing terms, based on interest rates likely available to DTMB at this time, and based on a 120-day lock option.
- 5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.
- 6) Analysis of annual cash flow for Agency during the Energy Performance Contract term.



EXHIBIT B
Notice of Acceptance of Technical Energy Audit Report

Notice of Acceptance

Date of Notice _____

Notice is hereby given that DTMB and Department of Corrections accept the Technical Energy Audit and Project Development Proposal by Contractor, as contemplated in **Section 2 of the Technical Energy Audit and Project Proposal Contract** dated _____.

Department of Corrections

By _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by Department of Corrections.



EXHIBIT C Guidelines for Draft Monitoring and Verification Plan

Measurement & Verification for

Performance Contracts

Why Measure and Verify?

Energy performance contracts are based on “guaranteed savings.” Any authentic guarantee of energy and cost savings includes adequate measurement and verification (M&V) activities.

There are many reasons to use measurement & verification strategies that go far beyond satisfying the law. Properly applied, measurement & verification can:

- Accurately assess energy savings for a project;
- Allocate risks to the appropriate parties;
- Reduce uncertainties to reasonable levels;
- Ensure that the Agency achieves utility budget savings;
- Monitor equipment performance;
- Find additional savings;
- Improve operations & maintenance;
- Verify savings guarantee is met;
- Allow for future adjustments, as needed.

Energy Savings Depend on Performance and Usage

There are two fundamental factors that drive energy savings: performance and usage. Performance describes the amount of energy used to accomplish a specific task, and may also be referenced as efficiency or rate of energy use. Usage describes the operating hours, or total time, that a piece of equipment runs.

The energy consumption is generally determined by multiplying performance (or efficiency) by usage (or operating hours). In all cases, both performance and usage factors need to be known to determine energy consumption and savings, as shown in Figure 1.

Savings are determined by comparing the energy use of the pre-retrofit case, called the *baseline*, with the post-retrofit energy use. This means that the performance and usage factors must be known for both the baseline and post-retrofit cases in order to determine energy savings.

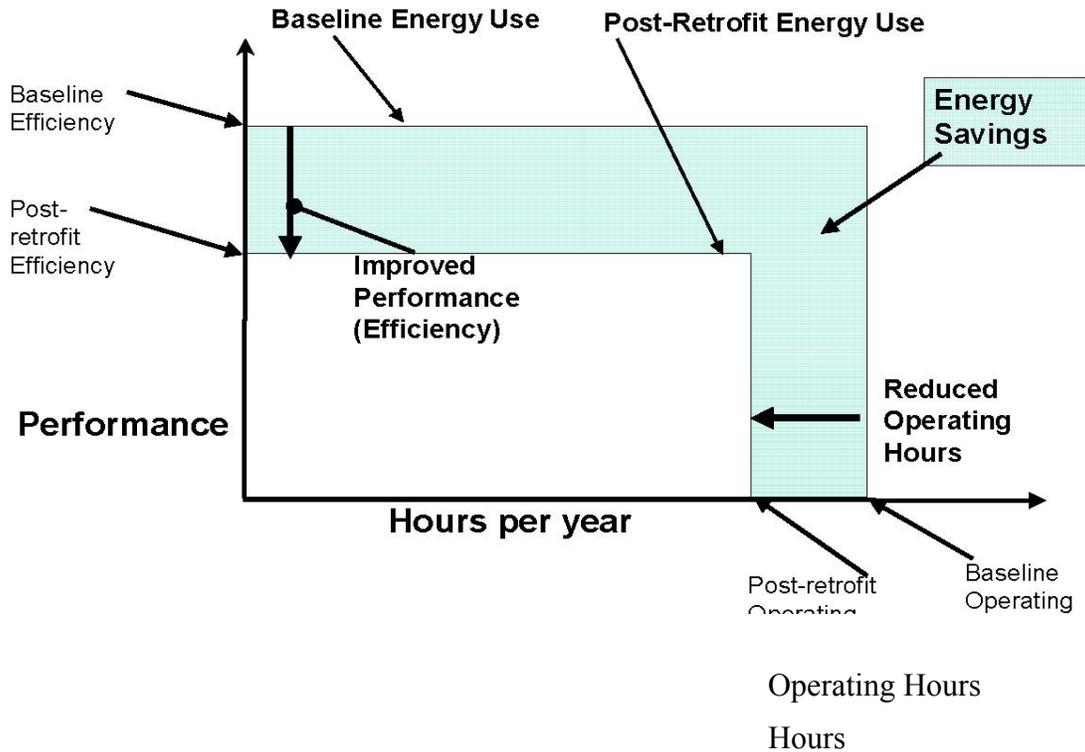


Figure 1: Energy Savings Depend on Performance and Usage

Both performance and usage factors need to be known to determine energy consumption and savings, as shown in Figure 1. Lighting provides a simple example: performance would be the watts required to provide a specific amount of light; usage would be the operating hours per year. Lighting energy used is equal to watts * operating hours.

A chiller is a more complex system: performance is defined as kW/ton, which varies with load; usage is defined by cooling load profile and ton-hours. Chiller energy must be analyzed on an hourly basis because equipment efficiency varies with loading, and is equal to Sum [kW/ton * ton/hours].

Using M&V To Allocate Risk

One of the primary purposes of M&V is to reduce risk to an acceptable level, which is a subjective judgment based on the Agency’s priorities and preferences. In performance contracts, risks are allocated between the ESCO and the owner. Allocation of risk is accomplished through carefully crafted M&V strategies.

“Risk” in the M&V context refers to the uncertainty that expected savings will be realized. Assumption of risk implies acceptance of the potential monetary consequences. Both ESCOs and agencies are reluctant to assume responsibility for factors they cannot



control, and stipulating certain parameters in the M&V plan can assign responsibility to each party for the parameters they are best able to control. For example, usage factors under the Agency's control such as lighting operating hours and thermostat setpoints are typically stipulated. Using stipulations means that the ESCO and Agency agree to use a set value for a parameter throughout the term of the contract, regardless of the actual behavior of that parameter.

If no stipulated values are used and savings are verified based entirely on measurements, then more of the risk resides with the ESCO, who must show that the guaranteed savings are realized, or prove how contributing factors effected the result. Alternatively, the Agency assumes the risk for the parameters that are stipulated. In the event that the stipulated values overstate the savings, the Agency will not be able to claim the actual shortfall from the ESCO's guarantee. If the actual savings are greater than expected due to underestimated stipulated values, the Agency benefits from the surplus savings.

Risk related to usage stems from uncertainty in operational factors. For example, savings fluctuate depending on weather, how many hours equipment is used, user intervention, or maintenance practices. Since ESCOs often have no control over such factors, they are usually reluctant to assume usage risk. The Agency generally assumes responsibility for usage risk by either allowing baseline adjustments based on measurements, or by agreeing to stipulated equipment operating hours or other usage-related factors.

Performance risk is the uncertainty associated with characterizing a specified level of equipment performance. The ESCO is ultimately responsible for selection, application, design, installation, and performance of the equipment and typically assumes responsibility for achieving savings related to equipment performance. To validate performance, the ESCO must demonstrate that the equipment is operating as intended and has the potential to deliver the guaranteed savings.

Using stipulations in savings estimates can be a practical, cost-effective way to minimize M&V costs and allocate risks. Stipulations used appropriately do not jeopardize the savings guarantee, the Agency's ability to pay for the project, or the value of the project to the government. However, stipulations shift risk to the Agency, and the Agency should thoroughly understand the potential consequences before accepting them. Risk is minimized through carefully crafted M&V requirements including diligent estimation of the stipulated values.

Primary Steps To Verify Savings

Regardless of the M&V strategy used, similar steps are taken to verify the potential for the installed energy conservation measures (ECMs) to generate savings. Verifying the potential to generate savings can also be stated as confirming that:



- Step 1: The baseline conditions were accurately defined,
- Step 2: A suitable project specific M&V plan was developed,
- Step 3: Proper equipment/systems were installed and are performing to specification, and
- Step 4: The equipment/systems continue to have the potential to generate the predicted savings.

These 4 steps are discussed in detail below.

Step 1: Define The Baseline

Typically the ESCO defines the baseline as part of a Technical Energy Audit. Baseline physical conditions (such as equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, and so on) are typically determined through surveys, inspections, spot measurements, and short-term metering activities. Baseline conditions are established for the purpose of calculating savings by comparing the baseline energy use to the post-installation energy use. Baseline data are used to account for any changes that may occur during the performance period, which may require baseline energy use adjustments. It is the Agency's responsibility to ensure the baseline has been properly defined.

In almost all cases after the measure has been installed, one cannot go back and re-evaluate the baseline. It no longer exists! Therefore, it is very important to properly define and document the baseline conditions. Deciding what needs to be monitored, and for how long, depends on factors such as the complexity of the measure and the stability of the baseline, including the variability of equipment loads and operating hours, and the number of variables that affect the load.

Step 2: Develop Project Specific Measurement & Verification Plan

The project specific M&V plan is developed during contract negotiations. The M&V plan is the single most important item in an energy savings "guarantee."

The project specific M&V plan includes project-wide items as well as details for each ECM, including:

- Details of baseline conditions and data collected
- Documentation of all assumptions and sources of data
- What will be verified
- Who will conduct the M&V activities
- Schedule for all M&V activities
- Discussion on risk and savings uncertainty
- Details of engineering analysis performed
- Detail baseline energy and water rates.
- Provide performance period adjustment factors for energy, water, and O&M rates, if used³.
- How energy and cost savings will be calculated
- Detail any operations & maintenance (O&M) cost savings claimed
- Define O&M reporting responsibilities
- Define content and format of all M&V reports (Post-Installation Commissioning and M&V,



Annual or periodic)

- How & why the baseline may be adjusted
- Define preventive maintenance responsibilities

³ Use NIST data to determine maximum allowable utility escalation factor. See Energy Escalation Rate Calculator (EERC 1.0-04) at

http://www.eere.energy.gov/femp/information/download_blcc.cfm.

Although the M&V plan is usually developed during contract negotiations, it is important that the Agency and the ESCO agree upon general M&V approaches to be used prior to starting the Technical Energy Audit. The M&V method(s) chosen can have a dramatic affect on how the baseline is defined, determining what activities are conducted during the audit.

It is strongly recommended that the format of M&V plan included in the Technical Energy Audit follows the Annual Report Outline⁴ developed by FEMP.

Step 3: Post-Installation Verification

Post-installation verification is conducted by both the ESCO and the Agency to ensure that proper equipment/systems were installed, are operating correctly, and have the potential to generate the predicted savings. The verification is accomplished through commissioning and M&V activities.

Commissioning of installed equipment and systems should be required. Commissioning ensures that systems are designed, installed, functionally tested in all modes of operation, and capable of being operated and maintained in conformity with the design intent regardless of energy impact. Commissioning is generally completed by the ESCO and witnessed by the Agency. In some cases, however, it is contracted out to a third party.

After system start-up and commissioning activities are completed, the acceptance testing (M&V) activities specified in the contract are implemented. Verification methods may include surveys, inspections, spot measurements, and short-term metering.

The results of the commissioning and M&V activities are usually presented in reports delivered by the ESCO prior to final project acceptance, as discussed below.

Post-Installation and Commissioning Reports

The results of the installation verification activities are presented in a Post-Installation Report delivered by the ESCO to the Agency prior to final project acceptance. This report also documents any changes in the contracted project scope and energy savings based on the actual installed conditions. The commissioning report details the commissioning activities conducted to assure equipment was properly installed and is operating to specification.

For projects using any stipulated values⁵ to calculate energy savings, the post-installation verification is the most important M&V step since any measurements to substantiate the savings



⁴ FEMP M&V Outlines are available through http://www.eere.energy.gov/femp/financing/superespecs_mvresources.cfm.

⁵ Using stipulations means that the ESCO and Agency agree to use a set value for a parameter throughout the term of the contract, regardless of the actual behavior of that parameter. Guarantee are made only once. Thereafter, inspections may be conducted to verify that the 'potential to perform' exists.

The Post-Installation Report includes:

- Project description
- Installation verification – list of installed equipment
- Details of any changes between Contract and as-built conditions, including energy impacts
- Documentation of all post-install verification activities and performance measurements conducted
- Performance verification – how performance criteria were met
- Expected savings for the first year

The Commissioning Report includes:

- Commissioning results and documentation

It is strongly recommended that the format of the Post-Installation Report follows the Post-Installation Report Outline⁶ developed by FEMP.

Step 4: Periodic Performance Period Verification

⁷ For at least the first two years after installation, the ESCO is required to submit an annual report documenting the savings actually achieved. Inspections should confirm that the installed equipment/systems have been properly maintained, continue to operate correctly, and continue to have the potential to generate the predicted savings. In many cases, equipment performance measurements should be used to substantiate savings.

Sometimes, more frequent verification activities can be appropriate. This ensures that the M&V monitoring and reporting systems are working properly, it allows fine-tuning of measures throughout the year based on operational feedback, and it avoids surprises at the end of the year.

At the Agency's option, the savings guarantee can be extended beyond the legislatively required 2 to 3 years. For more complex projects, ongoing M&V activities can help ensure the persistence of savings.

At the end of each performance year (as specified in the contract), the contractor submits an Annual Performance Report to demonstrate that the savings have occurred. Typically, only overall savings guarantee has to be met on a cumulative basis for all ECMs. It is appropriate, however, to itemize the 'actual' savings for each ECM.

The Annual Performance Reports should include:

- Results/documentation of performance measurements and inspections
- Realized savings for the year (energy, energy costs, O&M costs, other)
- Comparison of actual savings to the guaranteed amounts



- Details of all analysis and savings calculations, including commodity rates used and any baseline adjustments performed

⁶ FEMP M&V Outlines are available through
http://www.eere.energy.gov/femp/financing/superesp_mvresources.cfm.

- Summary of operations and maintenance activities conducted
- Details of any performance or O&M issues that require attention

It is strongly recommended that the format of Annual Report follows the Annual Report Outline⁸ developed by FEMP.

M&V Protocols and Methods

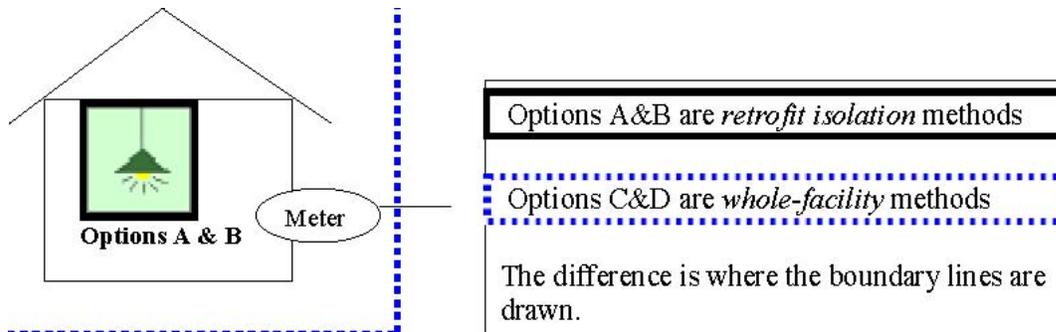
Measuring and verifying savings from performance contracting projects requires special project planning and engineering activities. M&V continues to evolve with the performance contracting industry, although common practices exist. These practices are documented in several guidelines including the *International Performance Measurement*

& Verification Protocol (IPMVP, 2001), *FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects* Version 2.2 (2000), and *ASHRAE Guideline 14: Measurement of Energy and Demand Savings* (2002). (FEMP M&V Outlines are available through
http://www.eere.energy.gov/femp/financing/superesps_mvresources.cfm.)

Many industry professionals consider the *International Performance Measurement & Verification Protocol* (IPMVP) the standard protocol for conducting M&V on energy saving projects. IPMVP is available through <http://ipmvp.org/>.

IPMVP groups M&V methodologies into four categories: Options A, B, C, and D. The options are generic M&V approaches for energy and water saving projects. Having four options provides a range of approaches to determine energy savings depending on the characteristics of the ECMs being implemented, and balancing the accuracy in energy savings estimates with the cost of conducting M&V activities.

M&V approaches are divided into two general types: retrofit isolation and whole facility. Retrofit isolation methods look only at the affected equipment or system independent of the rest of the facility; whole facility methods consider only the total energy use while ignoring specific equipment performance. Options A and B are retrofit isolation methods; Option C is a whole facility method. Option D can be used as either, but is usually applied as a whole facility method. The differences in these approaches are shown in Figure 2.



Options C & D

Figure 2: Retrofit Isolation vs. Whole-Facility M&V Methods

The four generic M&V options are described in more detail below. Each option has advantages and disadvantages based on site-specific factors and the needs and expectations of the Agency. While each option defines a savings determination approach, all savings are estimates since savings cannot be directly measured. Generally, the accuracy of savings estimates improves as more measurements are used in defining the baseline and monitoring the post-installation conditions. The improved accuracy in savings estimates must be weighed against higher M&V costs.

Option A – Partially Measured Retrofit Isolation

Option A is a retrofit isolation approach designed for projects in which the potential to generate savings must be verified, but the actual savings can be determined from short-term data collection, engineering calculations, and stipulated factors. Post-installation energy use, equipment performance, and usage are NOT measured throughout the term of the contract. Post-installation and baseline energy use is estimated using an engineering analysis of information that does not involve long-term measurements.

The intent of Option A is to verify performance through pre- and post-retrofit measurements. Usage factors can be measured or stipulated based upon engineering estimates, operating schedules, operator logs, typical weather data, or other documented information source. Post-retrofit measurements are made only once. Thereafter, inspections verify that the ‘potential to perform’ exists. So long as the ‘potential to perform’ is verified, the savings are as originally claimed and do not vary over the contract term.

Option A methods are appropriate for less complex measures whose performance and operational characteristics are well understood and are unlikely to change. An Option A approach can also be suitable when the value of the measure’s cost savings are low. Examples of projects where Option A may be appropriate include one-for-one lighting replacement measures, high efficiency motors with constant loads, or measures with small percentage of overall cost savings.

Additional information on the proper application of Option A methods are discussed in *Detailed Guidelines for FEMP M&V Option A* available through <http://ateam.lbl.gov/mv/docs/OptionADetailedGuidelines.pdf>.



Option B – Retrofit Isolation

Option B is a retrofit isolation or system level approach, and requires continuous measurement to provide long-term verification of the savings. This method is intended for retrofits with performance factors and operational factors that can be measured at the component or system level and where long-term performance needs to be verified. Option B is similar to Option A but uses periodic or continuous metering. Short-term periodic measurements can be used when variations in the measured factor are small. Continuous monitoring information can be used to improve or optimize the operation of the equipment over time, thereby improving the performance of the retrofit.

The intent of Option B is to verify performance periodically or continuously with long-term measurements. Usage factors may be stipulated as in Option A or measured continuously.

Option B methods are appropriate for complex systems whose load or operating conditions are not well known or are highly dependent on external factors. Examples of projects where Option B may be appropriate include variable frequency drive installations, modifications to control systems, chiller system upgrades, or measures with high percentage of overall cost savings.

Option C – Whole Facility Energy Use

Option C is a whole-building verification method. Savings are based on actual energy consumption as measured by the utility meter(s) and/or regression modeling. Estimated savings will vary over the contract term.

Option C verification methods determine savings by studying overall energy use in a facility. The evaluation of whole-building or facility-level metered data is completed using techniques ranging from simple billing comparison to multivariate regression analysis. Regression analysis can be used to account for weather and other factors to adjust the baseline and determine savings.

Option C is an appropriate and cost-effective method ONLY if facility operation is stable and savings are expected to exceed 20% of total energy consumption. However, Option C cannot verify the performance of individual measures but can verify the total performance of all measures including interactions

Option C methods are appropriate for projects whose measures have a high degree of interaction that would be difficult to predict, when overall energy savings are very large, or when dedicated utility meters are available for retrofitted equipment or systems.



Option D – Calibrated Simulation

Option D is primarily a whole-building method but can be used at the component level. Savings are based on the results of a calibrated computer simulation model. Estimated savings may vary over the contract term if real weather data is used.

Option D uses a calibrated computer simulation models of component or whole-building energy consumption to determine energy savings. Linking simulation inputs to baseline and post-installation conditions completes the calibration, and may involve metering performance and operating factors before and after the retrofit. Specialized software packages, such as DOE-2, are used in Option D and the development of accurate building models requires substantial time and expertise.

Option D methods are appropriate for complex projects where complex system interactions need to be tracked. Due to the expense of properly conducting Option D, suitable projects should have substantial cost savings or major building renovations such as window replacements and building insulation.

Recommended Measure Specific M&V Methods

Recommended M&V approaches are provided in this section for some of the most common measures, including: lighting upgrades, variable speed drives, constant speed motors, water measures, controls measures, boiler replacements, and chiller replacements.

Lighting Upgrades

Option A

Measure operating hours for duration of 2 – 3 weeks during audit phase, during non-holiday timeframe. Use sampling plan with 80 / 20 confidence / precision (11 samples per group).

If hours of operation are well documented and stable, then conservative stipulated hours are acceptable if backed up with some monitoring during the audit.

Fixture powers based on standard tables (utility or EPRI lighting tables) only if inventory of equipment is very accurate (including lamp & ballast types);

Measure power of unknown or unusual fixture types.

Use diversity factor to determine demand reduction (% lights on during utility peak)

Heating penalty, cooling bonus are allowable where appropriate. Provide detailed calculation methodologies.

Variable Speed Drives

Option B

Baseline operating hours should be measured. Baseline power should be measured; spot measurements acceptable for constant loads.

Post-retrofit operating hours and power (or speed) should be continuously measured (by EMCS), since demand savings are not guaranteed with VSDs (100% speed = 100% load). Adjust the baseline for actual use conditions if needed.



Constant Speed Motors

Option A

Baseline operating hours should be measured. If hours of operation predictable (i.e. 24 hrs/day), stipulate post-retrofit operating hours. If hours of operation are variable or change, measure post-retrofit motor runtime.

Measure baseline and post-retrofit motor powers (depends on load factor, which vary); spot measurements okay for constant loads.

Water Measures

Option C

If metering exists and usage is being affected by more than 20% then use Option C.

Establish statistically significant relationship between use and dependent factors (weather, occupancy and/or other use factors) using regression analysis during audit ($R^2 > 0.8$).

Adjust baseline using post-retrofit conditions or normalize post-retrofit data to typical year data.

Option A

Use if Option C is not applicable. Assume consumption (i.e. flushes/day) and ensure water consumption model accounts for no more than 75% of the water bill (result is conservative load assumptions) If irrigation exists then use winter only data to extrapolate to all months. Measure pre and post-retrofit fixture flow on a sampling basis (80% / 20%)

Controls Measures

Option B

Baseline conditions should be verified through short-term measurements (i.e. document operating hours; demonstrate no economizer or reset).

Energy Management Control System (EMCS) should be used to collect all relevant post-retrofit load data (i.e. operating hours, actual cooling delivered by economizer, the hours of temperature reset). Use data in engineering calculations to determine savings. Monthly monitoring of data collection recommended.

Boiler Replacement

Option C

Savings should exceed 20% of metered usage.

Establish a statistically significant relationship between utility use and weather and/or other dependent factors (occupancy and/or other use factors) using regression analysis during audit ($R^2 > 0.8$).

Post-retrofit use from utility bills or sub-metered data. Adjust baseline using actual weather or normalize post-retrofit data to typical year weather data.



Option A / B

- . Use if Option C is not applicable.
- . Operating hours and load should be measured and verified with analysis of utility data.
- . Baseline combustion efficiency should be measured. Post-retrofit combustion efficiency should be measured every year.
- . Establish relationship between use and weather and/or other dependent factors using regression analysis during audit. Adjust baseline using actual weather or normalize post-retrofit data to typical year weather data.

Chiller Replacement

Option B

Range of baseline efficiencies should be determined through measurements (kW/ton) If baseline efficiency is stipulated, the original (un-degraded) equipment efficiency should be used Use measured data to develop regression for weather vs. load Post-retrofit: continuously measure load and energy use. Apply baseline efficiency to measured load data to determine savings. Adjust baseline using actual weather or normalize post-retrofit data to typical year weather data.



EXHIBIT D
Cost and Pricing

2.0 COST AND PRICING

Maximum rates were established for your company in your initial response and later negotiations in contracting with the SEO/EPCP. Propose rates for this specific project that are equal to or less than your company’s stated maximum rates, in recognition that rates can vary with the project size, scope and location of the specific project. All other guidelines presented in the initial RFP for presenting markups and fees shall apply.

2.1 Markups

Markups shall be calculated as a percentage added to the base cost for the project. The use of margins in lieu of markups is not acceptable. Use only the categories shown. Ranges for markups are not acceptable.

MARK-UPS		
<i>CATEGORY OF MARK-UP</i>	<i>MARK-UP APPLICATION</i>	<i>% MARK-UP</i>
Overhead	Applicable to project cost	9%
Profit	Applicable to project cost	7%
Labor – Internal	Applicable to Chevron ES labor required to development and implementation of project	10%
Equipment Purchased	Applicable to Chevron ES equipment purchases for the implementation of project	9%
Materials Purchased	Applicable to Chevron Es materials purchased for the implementation of project	3%
Subcontract Labor	Applicable to subcontractor cost	9%
Subcontract Material	Applicable to subcontractor cost	3%



2.2 Fees

Use only the categories shown. Ranges for fees are not acceptable.

FEES		
<i>CATEGORY OF FEE</i>	<i>HOW DETERMINED AND USED</i>	<i>YEARS APPLIED (One-time, Annual, etc.)</i>
Technical Energy Audit and Project Development	\$ <u>0.04</u> per Square Foot	One time
Solicit & Evaluate Project Financing Proposals	Chevron ES will perform at zero cost	None
Design	<u>8 % of project cost</u>	One time
Contingency	5%	One time
Permits	1%	One time
Performance Bond	0.5%	One time
Project Management	6%	One time
Commissioning	3%	One time
Training	0.5%	One time
Monitoring and Verification	3%	Annual with option on renewals by client
Warranty Service	1%	One time
Maintenance on Installed Measures	2% for planned maintenance program	Annual

2.3 Best Value

Chevron’s approach to performance contracting delivers best value for the investment. With their commitment, experience, creativity, and other added benefits the projects Chevron ES has developed for customers are the envy of our competition. Enviable projects do not come from cookie-cutter application of specific ESCO solutions, but from the direct value and mitigation of risks that we bring to our energy service performance contracts.

Value of Commitment: Chevron ES has completed successful projects for state agencies throughout the nation as well as in Michigan. We have maintained an office in Michigan since 1995. Additionally, our staff has actively engaged with the State of Michigan to move projects that meet demanding budget requirements, reach goals for efficiency, utilize advanced technologies, and benefit the statewide economy.

Value of Experience: The State will directly benefit from the experience we have gained as an organization operating in the performance contracting industry over the past 36 years. Our projects range from traditional lighting and controls upgrades, to complex energy projects such as cogeneration, power substations, central plant construction, and thermal energy storage. Our engineers and business managers are adept at comprehending the specific needs, constraints, and long-term goals of our customers and designing custom solutions that work.



Our national footprint allows us to capitalize on the best practices and innovations taking place in other markets. Having the ability to expand our perspective on the performance contracting industry gives us the ability to begin each project open minded while capitalizing on experiences learned. This process challenges each person involved in a project to explore all possible ways of delivering a comprehensive, cost effective solution tailored to meet your needs.

Value of Customer Commitment: It is rare for an ESCO to develop the type of working relationship that Chevron ES has earned with several of our customers. After we completed a Phase One performance contract, we were asked to come back to perform additional phases with facilities upgrades. They trusted Chevron ES to get the project done quickly, correctly, and with reasonable costs and expenses. Chevron ES puts every effort into developing these types of critical business relationships with all our customers. We believe that nothing indicates our value more than repeat business.

Value of Vendor Neutrality and Pricing Power: Chevron ES is 100% vendor neutral. We are rewarded by providing solutions that our customers truly want and need, not by selling company branded product. Because we don't have product to sell, we cannot hide costs behind your vital equipment purchases. Maintaining a national presence coupled with the volume of performance contracts implemented (over \$2 Billion) also affords us the unique position in the marketplace to negotiate aggressive multipliers with vendors. This pricing power is passed on to our clients via competitively priced projects.

Value of Communication: Chevron ES is committed to developing an ESCO project that best fits the long-term plans for the State's facilities. We intend to work with State employees on a project that is not over-developed, but is successful and valuable to these facilities long-term.

Value of Performance: We guarantee that the project will perform as specified in our TEA. We will hold our subcontractors to perform, but even when they default or fail to perform we will find a company that will. We will hold our subs accountable, but we will not use them as an excuse for sub-par systems. CES takes all the risk on performance.

Value of the Energy Guarantee: The promise of future savings is only as good as the contractor and the guarantee. Chevron ES works with each of our customers to explain the most appropriate level of guarantee that best suits the customers and the situation. In other words the customer can pick the level of cost (risk) that he wants to assume. For a simple lighting retrofit, the cheapest savings guarantee might best suite the circumstance where as a complex control system might warrant an energy guarantee where Chevron ES takes more of the risk.

Value of a Long-Term Partner: Our resources are deep and broad and our company is constantly evolving to make us better. Doing business with Chevron ES provides a stable platform that can be counted on for years to come. The future is always uncertain, but partnering with us allows you to move forward with greater certainty that we will be a viable business partner. This gives our guarantees more credibility and less risk to our customers, because they know we will be there.



Value of Expert Financing Structures: Chevron ES has a strong working relationship with all of the premier financial institutions that focus on energy performance contracting market. In the past seven years we have secured over \$1.250 billion in combined project financings. These projects include Public Education, Higher Education, State, Local and Federal Government, Commercial/Industrial and Public Housing. These relationships have been strengthened over the years due to our organization's engineering focus that emphasizes strong guaranteed project performance, risk management practices, financial strength and meeting or exceeding all of our contractual obligations on each project.



Article 2 – DTMB Terms and Conditions
Table of Contents

DEFINITIONS 33

Article 2, Terms and Conditions..... 35

2.000 Contract Structure and Term 35

 2.001 Contract Term 35

 2.002 Options to Renew 35

 2.003 Legal Effect..... 35

 2.004 Attachments & Exhibits 35

 2.005 Ordering 35

 2.006 Order of Precedence 35

 2.007 Headings 36

 2.008 Form, Function & Utility 36

 2.009 Reformation and Severability 36

 2.010 Consents and Approvals 36

 2.011 No Waiver of Default 36

 2.012 Survival 36

2.020 Contract Administration 36

 2.021 Issuing Office 36

 2.022 Contract Compliance Inspector (CCI) 36

 2.023 Project Manager 37

 2.024 Change Requests 37

 2.025 Notices 38

 2.026 Binding Commitments 38

 2.027 Relationship of the Parties 38

 2.028 Covenant of Good Faith 38

 2.029 Assignments 38

2.030 General Provisions 39

 2.031 Media Releases 39

 2.032 Contract Distribution 39

 2.033 Permits 39

 2.034 Website Incorporation 39

 2.035 Future Bidding Preclusion 39

 2.036 Freedom of Information 39

 2.037 Disaster Recovery 39

2.040 Financial Provisions 40

 2.041 Fixed Prices for Services/Deliverables 40

 2.042 Adjustments for Reductions in Scope of Services/Deliverables 40

 2.043 Services/Deliverables Covered 40

 2.044 Invoicing and Payment – In General 40

 2.045 Pro-ration 41

 2.046 Antitrust Assignment 41

 2.047 Final Payment 41

 2.048 Electronic Payment Requirement 41

2.050 Taxes 41

 2.051 Employment Taxes 41

 2.052 Sales and Use Taxes 41

2.060 Contract Management..... 41

 2.061 Contractor Personnel Qualifications 41

 2.062 Contractor Key Personnel 42

 2.063 Re-assignment of Personnel at the State’s Request 42

 2.064 Contractor Personnel Location 42

 2.065 Contractor Identification 43

 2.066 Cooperation with Third Parties 43



2.067	Contract Management Responsibilities	43
2.068	Contractor Return of State Equipment/Resources	43
2.070	<i>Subcontracting by Contractor</i>	43
2.071	Contractor full Responsibility	43
2.072	State Consent to delegation	43
2.073	Subcontractor bound to Contract	44
2.074	Flow Down	44
2.075	Competitive Selection	44
2.080	<i>State Responsibilities</i>	44
2.081	Equipment	44
2.082	Facilities	44
2.090	<i>Security</i>	44
2.091	Background Checks	44
2.092	Security Breach Notification	45
2.093	PCI Data Security Requirements – Deleted, Not Applicable	45
2.100	<i>Confidentiality</i>	45
2.101	Confidentiality	45
2.102	Protection and Destruction of Confidential Information	45
2.103	Exclusions	46
2.104	No Implied Rights	46
2.105	Respective Obligations	46
2.110	<i>Records and Inspections</i>	46
2.111	Inspection of Work Performed	46
2.112	Examination of Records	46
2.113	Retention of Records	46
2.114	Audit Resolution	47
2.115	Errors	47
2.120	<i>Warranties</i>	47
2.121	Warranties and Representations	47
2.122	Warranty of Merchantability	48
2.123	Warranty of Fitness for a Particular Purpose	48
2.124	Warranty of Title	49
2.125	Equipment Warranty	49
2.126	Equipment to be New	49
2.127	Prohibited Products	49
2.128	Consequences For Breach	49
2.130	<i>Insurance</i>	50
2.131	Liability Insurance	50
2.132	Subcontractor Insurance Coverage	51
2.133	Certificates of Insurance and Other Requirements	51
2.140	<i>Indemnification</i>	52
2.141	General Indemnification	52
2.142	Code Indemnification	52
2.143	Employee Indemnification	52
2.144	Patent/Copyright Infringement Indemnification	52
2.145	Continuation of Indemnification Obligations	53
2.146	Indemnification Procedures	53
2.150	<i>Termination/Cancellation</i>	54
2.151	Notice and Right to Cure	54
2.152	Termination for Cause	54
2.153	Termination for Convenience	54
2.154	Termination for Non-Appropriation	55
2.155	Termination for Criminal Conviction	55
2.156	Termination for Approvals Rescinded	55
2.157	Rights and Obligations upon Termination	55



2.158	Reservation of Rights.....	56
2.160	<i>Termination by Contractor</i>	56
2.161	Termination by Contractor.....	56
2.170	<i>Transition Responsibilities</i>	56
2.171	Contractor Transition Responsibilities.....	56
2.172	Contractor Personnel Transition.....	56
2.173	Contractor Information Transition.....	57
2.174	Contractor Software Transition.....	57
2.175	Transition Payments.....	57
2.176	State Transition Responsibilities.....	57
2.180	<i>Stop Work</i>	57
2.181	Stop Work Orders.....	57
2.182	Cancellation or Expiration of Stop Work Order.....	57
2.183	Allowance of Contractor Costs.....	58
2.190	<i>Dispute Resolution</i>	58
2.191	In General.....	58
2.192	Informal Dispute Resolution.....	58
2.193	Injunctive Relief.....	59
2.194	Continued Performance.....	59
2.200	<i>Federal and State Contract Requirements</i>	59
2.201	Nondiscrimination.....	59
2.202	Unfair Labor Practices.....	59
2.203	Workplace Safety and Discriminatory Harassment.....	59
2.204	Prevailing Wage.....	59
2.210	<i>Governing Law</i>	60
2.211	Governing Law.....	60
2.212	Compliance with Laws.....	60
2.213	Jurisdiction.....	60
2.220	<i>Limitation of Liability</i>	60
2.221	Limitation of Liability.....	60
2.230	<i>Disclosure Responsibilities</i>.....	60
2.231	Disclosure of Litigation.....	60
2.232	Call Center Disclosure – Deleted, Not Applicable.....	61
2.233	Bankruptcy.....	61
2.240	<i>Performance</i>	62
2.241	Time of Performance.....	62
2.242	Service Level Agreements (SLAs).....	62
2.243	Liquidated Damages.....	62
2.244	Excusable Failure.....	63
2.250	<i>Approval of Deliverables</i>	64
2.251	Delivery Responsibilities.....	64
2.252	Delivery of Deliverables.....	64
2.253	Testing.....	64
2.254	Approval of Deliverables, In General.....	65
2.255	Process For Approval of Written Deliverables.....	65
2.256	Process for Approval of Services.....	66
2.257	Process for Approval of Physical Deliverables.....	66
2.258	Final Acceptance.....	66
2.260	<i>Ownership</i>	66
2.261	Ownership of Work Product by State.....	66
2.262	Vesting of Rights.....	66
2.263	Rights in Data.....	67
2.264	Ownership of Materials.....	67



2.270	<i>State Standards</i>	67
2.271	Existing Technology Standards	67
2.272	Acceptable Use Policy	67
2.273	Systems Changes	67
2.280	<i>Extended Purchasing - Deleted, Not Applicable</i>	68
2.281	MiDEAL- Deleted, Not Applicable.....	68
2.282	<i>State Employee Purchases – Deleted, Not Applicable</i>	68
2.290	<i>Environmental Provision</i>	68
2.291	Environmental Provision	68
2.300	<i>Other Provisions</i>	69
2.301	Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials	69



DEFINITIONS

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” means the seven year period following Contractor’s provision of any work under the Contract.

“Bidder(s)” are those companies that submit a proposal in response to this RFP.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday, Office of State **Employer mandated furlough day**, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DMB” means the Michigan Department of Management and Budget

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

“Excusable Failure” has the meaning given in **Section 2.244**.

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

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Bidders

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.



“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

“Recycling” means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of five months beginning **July 21, 2010** through **December 10, 2010**. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to **one** additional **six month** period.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

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



2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and the Department of Energy, Labor and Economic Growth (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

[Sue Ciecwiwa, Buyer Specialist](#)

Purchasing Operations

Department of Management and Budget

Mason Bldg, 2nd Floor

PO Box 30026

Lansing, MI 48909

Ciecibas@michigan.gov

Phone: (517) 373-0301

Fax: (517) 335-0046

2.022 Contract Compliance Inspector (CCI)

After DMB-PurchOps receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Department of Energy, Labor and Economic Growth, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no**



authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DMB Purchasing Operations. The Contract Compliance Inspector for this Contract is:

Jerry Elmblad
Assistant Manager
Physical Plant Division
Michigan Department of Corrections
Grandview Plaza
P.O. Box 30003
Lansing, MI 48909
elmblajr@michigan.gov
Phone: (517) 373-4471
Fax: (517) 241-5129

2.023 Project Manager

The following individual will oversee the project:

Jeff Niemi
Regional Physical Plant Supervisor, Region 1
Michigan Department of Corrections
4533 West Industrial Park Dr.
Kincheloe, MI 49788
niemije@michigan.gov
Phone: (906) 495-1005 ext. 241
Fax: (906) 495-1072

2.024 Change Requests

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.



2.025 Notices

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

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

Contractor:
Chevron Energy Solutions Company
Attention: Ken Hedrick
5445 Corporate Drive, Suite 180
Troy, MI 48098

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the table. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

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

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



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

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

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

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

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

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.



2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) Contract Payment Schedule
 1. Contractor request for performance-based payment.

The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
 2. Approval and payment of requests.
 - a) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.
 - b) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **Section 1.061** of this Contract.



c) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this Contract.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must



include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.



2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impede Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.068 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

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

2.072 State Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted in time agreed upon by the parties.



2.073 Subcontractor bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.



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

See Attachment I - Special Working Rules Department of Corrections Inside and Outside Prisons.

2.092 Security Breach Notification

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

2.093 PCI Data Security Requirements – Deleted, Not Applicable

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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



Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

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

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

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

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period.



If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

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

2.115 Errors

- (a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any



manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

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

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

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

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

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

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

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

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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



2.124 Warranty of Title

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

2.125 Equipment Warranty

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

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

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

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

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

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

All warranty work must be performed on the State of Michigan worksite(s).

2.126 Equipment to be New

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

2.127 Prohibited Products

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

2.128 Consequences For Breach

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



2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

Contractor may be allowed the use of self-insurance for any of the coverages listed provided that the self-insurance meets any applicable state laws and regulations, and Contractor provides evidence that it has the financial resources to meet all obligations under their self-insurance program. The state reserves the sole right to allow or disallow the use of self-insurance through its own discretion at any time.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See www.michigan.gov/dleg.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

- 1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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

- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

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

- 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification,



Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:

- \$100,000 each accident
- \$100,000 each employee by disease
- \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-PurchOps, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing



Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the



equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

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

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



under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

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

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

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The



State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

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

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment



or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

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

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a



specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor will notify all of Contractor's Subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under **Section 2.180**.

Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time



required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

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

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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



2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage

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

The Contractor, its Subcontractors, their Subcontractors and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous



place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

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

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities.



The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

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

- (a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
- (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB PurchOps.
- (2) Contractor must also notify DMB PurchOps within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DMB PurchOps within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure – Deleted, Not Applicable

2.233 Bankruptcy

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

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

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



2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.
- (d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 Service Level Agreements (SLAs)

- (a) SLAs will be completed with the following operational considerations:
 - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
 - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
 - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the



State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages in the amount of \$5,000.00 and an additional \$100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.141**, the State may assess liquidated damages against Contractor as specified below.

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

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

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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



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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

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

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

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

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

2.252 Delivery of Deliverables

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

2.253 Testing

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

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



2.254 Approval of Deliverables, In General

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

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

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

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

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

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

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval



of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

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

2.258 Final Acceptance

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

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of



law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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



2.280 Extended Purchasing- Deleted, Not Applicable

2.281 MiDEAL- Deleted, Not Applicable

2.282 State Employee Purchases – Deleted, Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

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

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

Hazardous Materials:

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

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

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



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

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Other Provisions

2.301 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Article 6 Recovery Act Terms and Conditions

**SOLICITATION & AWARD TERMS FOR ASSISTANCE AGREEMENTS THAT
INCLUDE FUNDS UNDER THE AMERICAN RECOVERY AND REINVESTMENT
ACT OF 2009, PUBLIC LAW 111-5**

6.001	Definitions	71
6.010	Reporting & Registration Requirements (Section 1512)	71
6.020	Buy American Requirement (Section 1605)	73
6.030	Prevailing Wages	76
6.040	Inspection & Audit of Records	76
6.050	Whistle Blower Protection for Recipients of Funds	76
6.060	Funding of Programs	76
6.070	Fixed Price- Competitively Bid	76
6.080	Reserved	77
6.090	Publication	77
6.100	Reserved	77
6.110	Non- Discrimination	77
6.120	Prohibition on Use of Funds	77
6.130	False Claims Act	77
6.140	Reserved	77
6.150	Job Opportunity Posting Requirements	77



6.001 Definitions

Definitions:

ARRA means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

6.010 Reporting & Registration Requirements (Section 1512)

These reporting requirements are a material obligation of the Contract. Contractor's failure to comply may be a material basis for termination under Section 2.150, Termination by the State.

On July 1, October 1, January 1, and April 1, Contractor must provide the following information to the State:

- (A) The name of the project or activity;
- (B) A description of the project or activity;
- (C) An evaluation of the completion status of the project or activity;
- (D) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
- (E) Detailed information on any subcontracts awarded by Contractor to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), as prescribed by the Director of OMB as follows:

For all subcontracts that meet any of the following qualifications, Contractor must provide the total number and total monetary amount of subcontracts:

- (1) valued at less than \$25,000;
- (2) awarded to an individual; or
- (3) awarded to an entity other than an individual which had less than \$300,000 in gross income in the previous tax year.

For all other subcontracts, Contractor must provide:

- (1) Subcontractor identifying information:
 - (a) Subcontractor's nine digit Data Universal Numbering System (DUNS) number; or
 - (b) U.S. Central Contractor Registration plus 4 extended DUNS number.
- (2) Award number or other identifying number assigned by Contractor.
- (3) Subcontractor's Legal Name as registered in the U.S. Central Contractor Registry.
- (4) Subcontractor's location, including:
 - (a) Physical location as listed in the Central Contractor Registry; and
 - (b) United States Congressional District (format of MI-002 where the Michigan 2nd Congressional District is the location).
- (5) Subcontractor's entity type (choose one):



- (a) State government
 - (b) County government
 - (c) City or Township government
 - (d) Regional organization
 - (e) Independent School District
 - (f) Public/State-controlled institution of higher education
 - (g) Federally recognized Indian/Native American Tribal government
 - (h) Non-Federally recognized Indian/Native American Tribal government
 - (i) Indian/Native American Tribally designated organization
 - (j) Non-profit with 501(c)(3) IRS status (not institution of higher education)
 - (k) Non-profit without 501(c)(3) IRS status (not institution of higher education)
 - (l) Private institution of higher education
 - (m) Individual
 - (n) For-Profit organization (not small business)
 - (o) Small business
 - (p) Hispanic-serving institution
 - (q) Historically Black Colleges and Universities (HBCUs)
 - (r) Tribally Controlled Colleges and Universities (TCCUs)
 - (s) Alaska Native and Native Hawaiian serving institutions
 - (t) Non-domestic (non-US) entity
 - (u) Other
- (6) Cumulative amount of cash disbursed to subcontractor as of reporting period end date.
- (7) Total amount of cash to be disbursed by the end of the subcontract.
- (8) Date that the subcontract was awarded.
- (9) Date that the subcontractor's contract is scheduled to be completed.
- (10) Primary performance location.
- (11) The names and Total Compensation of the 5 most highly compensated officers of the entity if the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, and the subcontractor in the preceding Federal fiscal year received:
- (a) 80 percent of more of its annual gross revenues from Federal awards; and
 - (b) \$25,000,000 or more in annual gross revenues from Federal awards.

For the purposes of this provision, "Total Compensation" means the cash and non-cash dollar value earned by the executive during the subcontractor's past fiscal year, including the following:

- (a) Salary and bonus.
- (b) Awards of stock, stock options, stock appreciation rights. Use the dollar value used for financial statement reporting purposes with respect to the fiscal year.



- (c) Earnings for services under non-equity incentive plans. Do not include group life, health, hospitalization, medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (e) Above-market earnings on deferred compensation which are not qualified.
- (f) Other compensation, including severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.00.

6.020 Buy American Requirement (Section 1605)

Definitions as used in this section:

- (A) *Designated Country* means:
 - (1) a World Trade Organization Government Procurement Agreement country: Aruba, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom; or
 - (2) a Free Trade Agreement (FTA) country: Australia, Chile, and Singapore.
- (B) *Designated Country Good* is iron, Steel, or a Manufactured Good (other than construction-grade steel, motor vehicles, and coal) that:
 - (1) is wholly the growth, product or manufacture of a Designated Country; or
 - (2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated Country into a new and different Manufactured Good distinct from the materials from which it was transformed.
- (C) *Domestic Good* is iron, Steel, or a Manufactured Good that:
 - (1) is wholly the growth, product or manufacture of the United States; or
 - (2) in the case of a Manufactured Good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different Manufactured Good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in Manufactured Goods or products, as long as the manufacture of goods occurs in the United States.
- (D) *Federal Agency* means the department or agency of the federal government that awarded funds to the State of Michigan from the ARRA which finances the project described in this RFP.
- (E) *Foreign Good* is iron, Steel, or a Manufactured Good that is not a Domestic or Designated Country Good.



(F) *Manufactured Good* means a good brought to the construction site for incorporation into the building or work that has been--

- (1) processed into a specific form and shape; or
- (2) combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(G) *Public Building* and *Public Work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(H) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(I) *United States* means the 50 States, the District of Columbia, and outlying areas.

I. Required use of Domestic Goods

(A) Under ARRA section 1605, only Domestic Goods will be used in the construction, alteration, maintenance, or repair of a Public Building or Public Work, unless an exception applies. This requirement does not apply to the Domestic Goods listed:

None

(B) A Contractor requesting a determination regarding the inapplicability of ARRA section 1605 must submit the request to the Federal Agency with adequate time to allow a determination. A Contractor must provide a copy of this request to the DMB Buyer. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of ARRA section 1605.

(C) The Federal Agency may except other iron, Steel, or Manufactured Goods (other than construction-grade steel, motor vehicles, and coal) if it determines that:

- (1) the cost of Domestic Goods would be unreasonable. The cost of Domestic Goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (2) the iron, Steel, or Manufactured Good (other than construction-grade steel, motor vehicles, and coal) is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) the application of ARRA section 1605 would be inconsistent with the public interest.

(D) Regardless of the status of any determination request, any Contractor that requests to use non-Domestic Goods must include in its determination request:



- (1) a description of the iron, Steel, or Manufactured Goods;
- (2) unit of measure;
- (3) quantity;
- (4) cost;
- (5) time of delivery or availability;
- (6) location of the construction project;
- (7) name and address of the proposed supplier; and
- (8) a detailed justification of the reason for use of non-Domestic Goods.

(E) If the Contractor proposes the use of non-Domestic Goods, the Contractor must submit an alternate proposal based on the use of equivalent Domestic Goods. If an alternate proposal is submitted, the Contractor must submit a separate cost comparison table similar to the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.

(F) A request based on the unreasonable cost of a Domestic Good must include a survey of suppliers and a completed cost comparison table listed below for each item. The Contractor must list the name, address, telephone number, e-mail address, and contact person for each supplier surveyed. The Contractor must also attach a copy of each supplier's response; if the response is oral, the Contractor must attach a summary. The Contractor may include other supporting information.

DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON

Description of Goods	Unit of measure	Quantity	Cost (dollars)*
Item 1: Domestic Goods..... non-Domestic Goods.....			
Item 2: Domestic Goods..... non-Domestic Goods.....			

**Include all delivery costs to the construction site.*

(G) If the Federal Agency denies an exception requested under ARRA section 1605, the State will pursue the Contractor's proposal based on the use of Domestic Goods.

(H) Any request under subsection (b) submitted must explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the contract was awarded. If the Contractor does not submit a satisfactory explanation, the Federal Agency does not need to make a determination.

(I) If the Federal Agency determines after the contract award that an exception to ARRA section 1605 or the Buy American Act applies, and the agency and the Contractor negotiate adequate consideration, the agency will modify the contract to allow use of the non-Domestic Goods. However, when the basis for the exception is the unreasonable cost of a Domestic Good, adequate consideration must not be less than the differential established in the DOMESTIC AND NON-DOMESTIC GOODS COST COMPARISON table.



(J) ARRA section 1605 does not apply to equipment or tools which are not incorporated into the building or work.

6.030 Prevailing Wages

Under ARRA section 1606, wages paid to all laborers and mechanics employed by the Contractor and each subcontractor on projects funded in whole or in part with funds available under ARRA must not be less than prevailing wages on projects of a similar character in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Michigan is available at <http://www.gpo.gov/davisbacon/mi.html>. This provision supersedes section 2.204, Wage Rate Requirements.

6.040 Inspection & Audit of Records

In addition to the requirements of Article 2:

(A) Contractor must permit both the United States Comptroller General or its representative and the United States Inspector General or its representative to:

- (1) examine any records that directly pertain to, or involve transactions relating to, this contract; and
- (2) interview any officer or employee of the Contractor or any of its subcontractors, regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

(B) This provision must be included in all subcontracts.

(C) Failure to comply with subsection (a) or (b) is considered a material breach and may result in the termination of the Contract.

6.050 Whistle Blower Protection for Recipients of Funds

Contractor must post notice of an employee's rights and remedies for whistleblower protections under ARRA section 1553. Contractor must include this section in all subcontracts.

6.060 Funding of Programs

Under 2009 PA 7, Section 209, this Contract is supported with temporary federal funds made available by the ARRA. The programs supported with the temporary federal funds will not be continued with state financed appropriations once the temporary federal funds are expended.

6.070 Fixed Price- Competitively Bid

Contractor must, to the maximum extent possible, award subcontracts as fixed-price contracts through competitive bid procedures.



6.080 Reserved

6.090 Publication

Contractor must identify projects supported by the ARRA by including the appropriate emblems as the State may require.

6.100 Reserved

6.110 Non- Discrimination

In addition to the requirements of Article 2, Contractor must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

6.120 Prohibition on Use of Funds

Funds paid to the Contractor must not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6.130 False Claims Act

Contractor must promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. 3729, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving the ARRA.

6.140 Reserved

6.150 Job Opportunity Posting Requirements

Contractor shall post notice of job opportunities funded by this Contract in the Michigan Talent Bank, www.michworks.org/mtb.



ATTACHMENT I

DEPARTMENT OF CORRECTIONS - INSIDE PRISON

The Work comprising this Project will be performed at a State Correctional Facility and the Contractor must comply with the following special working rules, adopted December 1, 1975, as amended by the Michigan Department of Corrections.

1. Contractor must submit a list of names, driver's license numbers, birth dates, and additional information when requested, on all persons to be employed on the Project site. Such list must be submitted directly to the Warden's office or to the Correctional Facility authority for approval before any person's appearance at the site for Work assignments. These employees will be required to watch an approximately 10-minute video.
2. Contractor will be allowed to work within or on Correctional Facility confines from 7:30 a.m. to 5:00 p.m. No Work must be performed on Saturdays or Sundays without written permission from the State Agency. The State Agency may set other time schedules as discussed during the pre-construction meeting. Consideration will be given to using two shifts to minimize the length of time an area is out of service.
3. All employees of the Contractor may be subject to individual body search each time they enter the Correctional Facility. Packages or containers of any kind may be opened for inspection. Lunch boxes are not permitted inside the security perimeter. All employees of the Contractor will be required to have legal picture identification card.
4. All trucks and other mobile equipment may be subject to inspection both on arrival and upon departure from the Correctional Facility. Absolutely no fraternization between inmates and Contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to Correctional officers.
5. No requests for visits with inmates will be granted to Contractor's employees except where such visiting originated prior to award of the Contract.
6. Contractor must follow rules pertaining to foot and vehicle traffic as established by the Correctional Facility. Contractor must observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and their workers may not leave the assigned Work areas.
7. All heavy power tools and machinery such as air hammers, acetylene tanks, etc., must be removed from the inside of the security perimeter, through the assigned gate by 3:30 p.m., which is the closing time for the gate. Such heavy equipment as power shovels, compressors, welding machines, etc., can remain inside but must be immobilized in an acceptable manner. Cutting torches and cutting tools in general must be securely locked where and as directed by the Agency, and checked out as needed. No tools, small pipe, copper or wire must remain on the site overnight unless acceptably locked inside shanties or tool chests.
8. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Correctional Facility personnel and the Contractor.
9. The assigned gate through which materials, equipment and vehicles must be transported will be opened upon request between the hours of 8:00 a.m. to 3:30 p.m., or as determined by agreement with facility operations.
10. Sanitary facilities will be assigned by the Correctional Facility authorities for the use of the Contractor's employees, unless noted otherwise in Section 01500 1.C.
11. Guards may be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
12. Areas for employee parking, tool boxes, etc., must be assigned only by Correctional Facility authorities on the site. Remove all firearms, weapons, alcoholic beverages, drugs, medicines or explosives from vehicles before entering Facility property. Lock vehicles when not attended.
13. Accidents - The Correctional Facility infirmary is not available to Contractor's employees.
14. The Warden of this Correctional Facility retains the right to revise these "Special Working Conditions" as required to meet Facility needs.

*****NOTE TO THE PROFESSIONAL:** Contact the State agency with regard to available areas for storage of tools and materials and for the fabrication of components.



DEPARTMENT OF CORRECTIONS - OUTSIDE PRISON

The Work comprising this Project will be performed at a State Correctional Facility and the Contractor must comply with the following special working rules, adopted December 1, 1975, as amended by the Michigan Department of Corrections.

1. Contractor must submit a list of names, driver's license numbers, birth dates, and additional information when requested, on all persons expected to be employed on the Project site. Such list must be submitted directly to the Warden's office or to the Correctional Facility authorities for approval before any person's appearance at the site for Work assignments. These employees will be required to watch and approximately 10-minute video.
2. Contractor will be allowed to work within or on Correctional Facility confines from 7:00 a.m. to 5:00 p.m. No Work must be performed on Saturdays or Sundays without written permission from the State Agency. The State Agency may set other time schedules as discussed during the pre-construction meeting. Consideration will be given to using two shifts to minimize the length of time an area is out of service.
3. All truck and other mobile equipment may be subject to inspection both on arrival and upon departure from the Correctional Facility. Absolutely no fraternization between inmates and Contractor's employees will be tolerated. Any attempts at same by inmates are to be reported immediately to correctional officers.
4. No requests for visits with inmates will be granted to Contractor's employees except where such visiting originated before award of the Contract.
5. Contractor must follow rules pertaining to foot and vehicle traffic strictly in accordance with and as established by the Correctional Facility. Contractor must observe all off-limit restricted areas beyond which no unauthorized personnel may trespass. The Contractor and their workers may not leave the assigned Work areas.
6. Heavy equipment such as bulldozers and power shovels must be locked or be immobilized in an acceptable manner, when not in use. No tools, small pipe, copper or wire will be allowed to remain on the site overnight unless acceptably locked inside shanties or tool chests. There will be no exchange, loaning or borrowing of tools, equipment or manpower between Correctional Facility personnel and the Contractor.
7. Sanitary facilities will be assigned by the Correctional Facility authorities for the use of the Contractor's employees, unless noted in Section 01500 1.C.
8. Prison Guards may be assigned to the working areas. They may inspect and search areas under construction at any time, including the Contractor's equipment.
9. Areas for employee parking, tool boxes, etc., must be assigned only by Correctional Facility authorities on the site. Remove all firearms, weapons, alcoholic beverages, medicines or explosives from vehicles before entering Facility property. Lock vehicles when not attended.
10. Accidents - The Correctional Facility infirmary is not available to Contractor's employees.
11. The Warden of this Correctional Facility retains the right to revise these "Special Working Conditions" as required to meet Facility needs.
12. Cooperation with Owner will be required in establishing the sequencing of the work areas to minimize disruption of Facility operations.